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# MINUTES OF EVIDENCE

TAKEN BEFORE THE

SELECT COMMITTEE

ON THE

A F F A I R S

OF

THE EAST INDIA COMPANY;

AND ALSO AN

APPENDIX AND INDEX.

I.

*Public.*

*Ordered, by The House of Commons, to be Printed,*

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## I.—*Public.*

### EXTRACT from the REPORT of the COMMITTEE.

AMONG the most important matters brought under the review of the Committee, in the Public or Miscellaneous Branch of the Inquiry, will be found the following :

The Constitution, Powers, Expense, Practical Efficiency, and Defects, of the different branches of the Indian Government, both at home and abroad :

The Appointment and Nomination of European Servants for the Civil Administration of India, their Character, Education, Qualifications, and Oriental Acquirements :

The Policy of employing Natives more extensively in Indian Administration ; their Feelings and Opinions regarding our Government ; and their Condition in reference to Education :

The introduction of the English Language into the proceedings in the Company's Courts of Justice :

The Laws under which our Indian Empire is governed, and their Administration, and the degree in which they are applicable to European Settlers or Residents, or are capable of being made applicable to them :

The Condition and Character of such Settlers, and the Policy of encouraging them :

The State of the Press in India :

The Church Establishment, with reference to the Actual State of Christianity in India : and {

The Powers and Practical Effect of the King's Courts at the different Presidencies.

In reporting the result of their inquiry on these points, the Committee feel anxious to abstain, as far as possible, from the expression of any opinion : they prefer submitting to The House a general Summary of the Evidence. They would, however, strongly recommend an attentive perusal and consideration of that Evidence.

There will be found in the Appendix to the Evidence, besides a valuable Digest of the Evidence taken before the Committee of the Lords in 1830, and before preceding Committees of the Commons, an interesting Memoir of the steps taken for the purpose of Educating the Natives in India ; a selection from the Public Correspondence on that subject ; and similar selections with regard to the Employment of Natives in the Civil Departments ; the best mode of qualifying the European Civil Servants for their official duties in India ; and the Numbers and Salaries of the Ecclesiastical Functionaries.

## I.—HOME GOVERNMENT.

THE Authorities composing the Home Government are (1.) The Court of Proprietors; (2.) The Court of Directors; (3.) The Board of Control.

1. In the Evidence, the Constitution and Qualifications of the Proprietors; the Functions of that Court; and their Fitness to choose the Directors; are severally brought under review.

10. As the qualification for a single vote, a Proprietor must possess, and  
14. have held for 12 months, 1,000*l.* stock; no minor may vote, nor can  
18 a Proprietor vote by proxy. The number entitled to vote, at the present time, is 1,976; of which 54 have four votes, 50 have three votes, 370 have two, and 1,502 one vote.

1344. Exclusive of the profitable investment of Capital which India Stock has  
1345. hitherto afforded, individuals have become Proprietors, from connexion with that country, and previous residence there; from a desire to take part in the discussion of Indian affairs at the General Courts; and for the purpose of promoting the election of their friends, and participating in the patronage.

19. The Court of Proprietors elect the Directors, and declare the Dividend,  
4. which, since 1793, has always been declared at the maximum of 10½ per  
6. cent., allowed by the Act of that year. They have no general control over the Court of Directors, but they make Bye-laws, which are binding upon the Company, when no Act of Parliament exists to the contrary.  
9. All Proceedings in Parliament affecting the Company's interests, and all  
18. Grants of Money above 600 *l.*, must be submitted to them; but no Grant above 600 *l.* made by them is valid, unless confirmed by the Board of Control. Their powers were materially limited by the Acts of 1784 and  
6. 7. 1793; they can neither revoke, suspend, nor vary, any order of the Court  
23. of Directors which has been sanctioned by the Board of Control; and  
8. though there appears to be no restriction on their discussing any measure  
25. See 1603. of the Directors, they are, in fact, virtually precluded from all substantial interference in the affairs of India.

27. 2. The Court of Directors consists of 24 Proprietors, who conduct the whole affairs of India, both at home and abroad, subject, on most points, to the Board of Control.

27. Thirteen form a Court; six of the 24 Directors go out annually by  
50. 57. rotation, and such has been the law since 1773; but they are re-eligible at the expiration of a year, and are generally re-elected.

163. 169. The election of the Chairman and Deputy Chairman takes place an-  
1804-1809. nually by the Directors; nor does any fixed rule regulate their choice.

74. The power of nominating the Governors and Commanders-in-Chief  
1271. is vested in the Directors, subject to the approval of the Crown. The Court can recall a Governor, or any of their servants, independently of the Board of Control. Subject to the power and supervision of the same Board, most of the Despatches connected with the Government of India are prepared by the Directors. In case of collision between the Court and the Board, an appeal lies to the King in Council, as an ultimate resort.  
1252. 1257. 65.

36. 44. Every Director has, or has power to have, full cognizance of all the affairs of the Company, and has, when in Court, the power of interference; but every Director has not the opportunity of sitting and deliberating in the Committee of Correspondence, which is filled up on the principle of succession by seniority alone.  
1800. 1803. 296.

For the dispatch of business, the Court of Directors is divided into three principal Committees : the Committee of Correspondence ; the Committee of Buying and Warehouses ; and the Committee of Shipping. To these Committees the Directors are annually appointed by seniority ; and after the election of the Chairman and Deputy Chairman, the names of the Members who are to compose the several Committees, are proposed by the Chairman to the Court. The Committee of Correspondence stands highest in the scale ; it consists of the nine senior Members, with the Chairman and Deputy Chairman, making eleven. Each Member of the Committee of Correspondence must have passed through the Committees of Buying and Warehouses, and of Shipping, however high and important may have been the station which he has previously filled in India, or elsewhere.

All that relates to the preparation of Despatches for India, generally, belongs to the Committee of Correspondence ; particularly all the more important Political Business.

It appears from the Evidence that all the Despatches, not of a secret nature, have originated with the Court of Directors, and that, during the last 17 years the Board have directed the preparation of 49 or 50, out of a total number amounting to nearly 8,000. They have continually made important alterations, but the Law has precluded them from any other mode of originating a Despatch than that of directing the Court to prepare it.

All Communications addressed to the Court of Directors, of whatever nature, and whether received from abroad or from parties in this country, go, in the first instance, to the Secretary's Office, and are laid by the Chairman before the first Court that meets after their receipt. Despatches of importance are generally read to the Court at length. The Despatches, when read or laid before the Court, are considered under reference to the Committee of Correspondence, and the officers whose duty it is to prepare Answers, take the directions of the Chairs upon points connected with them ; the Draft of an Answer is framed upon an examination of all the documents to which the subject has reference, and submitted to the Chairs ; it is then brought before the Committee of Correspondence, to be revised by them, and is afterwards laid before the Court of Directors, for their approval or alteration. When it has passed the Court, it goes to the Board of Control, who are empowered to make any alterations, but are required to return it within a limited time, and with reasons assigned for the alterations made. Previously, however, to the Draft being laid before the Committee of Correspondence by the Chairs, experience has suggested the convenience of submitting it to the President of the Board, in the shape of what is called a Previous Communication. In this stage alterations are made by the President, without the formality of assigning reasons for them. The Previous Communication being returned to the Chairman, is laid by him before the Committee of Correspondence, either with or without the alterations made by the President, or with a modification of them, as he may see fit. Against the formal alterations made by the Commissioners for the Affairs of India, the Court may make a representation to the Board, who have not unfrequently modified the alterations on such representation ; but if the Board decline to do so, they state the same to the Court, and desire that the Draft may be framed into a Despatch, and sent out to India, agreeably to the terms of the Act of Parliament. In the event of a refusal, the Court may be compelled by Mandamus to comply with the order, but if they doubt the competency of the Board, they may appeal to the King in Council, who decides whether the Board is acting within its power.

1806.  
30. 1811.  
35. 296. 1302.  
32.

333. 31.

34.  
295.

1252.  
413. 415.  
1257.  
416.

36.  
59. 66.

332.

63. 248.

283.  
63. 248.

By the Act of 1784, the Directors are charged with appointing a Secret Committee, whose province it is to forward to India all Despatches which, in the opinion of the Board of Control, should be secret, and the subject-matter of which can only be divulged by their permission. The Committee consists of three Directors, chosen by the Court, viz. the Chairman, Deputy Chairman, and most frequently the Senior Director not in the Chair, who take the Oath of Secresy, as prescribed by the Act. Their officers also are sworn to secresy; and no one is employed in transcribing Secret Despatches without the permission of the Board. The Board are empowered by Law to issue, through the Secret Committee, Orders and Instructions on all matters relating to War, Peace, or Negotiation with the States of India; and the Secret Committee are bound to transmit such orders to India without delay. The Secret Committee have no legal power to remonstrate against such Orders, provided they have relation to the subjects above stated. They have, however, had communication, upon matters stated in Secret Despatches, with the Board, and at their suggestion alterations have been made; but they have not the same power with regard to Secret Despatches as the Court have with regard to other Despatches; they are not empowered by Law to make any representations thereon to the Board.

It has been stated that another class of subjects, not provided for in the Act which establishes the Secret Committee, has been necessarily treated through that Committee, upon which its Orders have been more punctually obeyed than in other cases,—namely, Negotiations with European States having Settlements in India, and generally all matters connected with War in Europe, which can in any way affect our Indian interests

When either War against a Native State, or an Expedition against any of the Eastern Islands, has been in contemplation, and the Finances of India at such periods have been exceedingly pressed, or have required aid from this country, the Secret Committee, in communication with the Board, have taken upon themselves, without previous communication with the Court, to provide the requisite funds. Thus, Despatches relating to subjects purely Financial and Commercial, such as the Transmission of Bullion, and the nature and amount of the Company's Investments, have gone through the Secret Committee. Of late years, however, and especially since 1816, great attention seems to have been paid to exclude from this Department all matters which did not properly belong to it, and even in those to confine the exercise of its interference within the narrowest limits possible, leaving all Political Communications to be made through the ordinary channel, when it could be done without detriment to the Public Service.

It is alleged that the events and occurrences which have given rise to the Secret Correspondence have occasionally passed over before any Instructions can reach India; and Copies of Papers sent to the Secret Committee, relating to matters of high political and personal importance, have found their way to individuals in this country, while the Court of Directors, technically speaking, were ignorant of the subject of them. But upon subjects involving considerations of policy towards European and American States, it seems obvious that there ought to be a means of sending Despatches to India without communicating their contents to so numerous a body as the Court of Directors. It has been stated, that if any doubt could exist on this head, abundant materials in the records of the Secret Department might be found to prove the absolute necessity of such a channel.

With

With regard to what may be termed the Internal Policy of British India, the Secret Correspondence has been (as we have already stated) mainly confined to the conduct to be pursued towards the Native Powers, and Negotiations and Questions of Peace and War with them and the neighbouring Asiatic Nations. It would seem to be the necessary condition of so vast and distant an Empire, that such Questions must, for the most part, be practically resolved by the Local Government of India, and accordingly all great measures relating to them appear to have originated with those Authorities. Yet it has been alleged, that on some not inconsiderable points, the interference of the Government at Home has been effectual, and that the many peremptory injunctions which are said to be recorded in the Despatches of this Committee, must have had an effect in modifying, if not in directing, the general course pursued by those Authorities on various occasions.

Having thus presented a brief outline of the Constitution and Functions of the Courts of Proprietors and Directors, the organs of the Company in all its public and private transactions, the Committee propose, in a similar way, to advert to the Board of Control; and to conclude their remarks on the Evidence relating to the Home Government, by a review of the Extent of the Correspondence, and of the Plans which have been proposed for abridging it, and for expediting the Preparation and Transmission of Despatches to India.

3. The Board is constituted by a Commission under the Great Seal, the first-named Commissioner being President of the Board. The First Lord of the Treasury, the Chancellor of the Exchequer, and the Secretaries of State are, *ex officio*, Members of the Board; and two of the Commissioners are not of the Privy Council. This is the constitution of the Board under the Act of 33 Geo. 3, c. 52. 192.

By the Act 51 Geo. 3, c. 75, there is no limitation with respect either to the number of Commissioners who are to be paid, or to the amount of their Salaries; but in practice the number of paid Commissioners has been limited to three, namely, the President and two others. 194.

For a statement of the Departments into which the Board is divided, reference is made to the Memorandum delivered in by B. S. Jones, Esq., the Assistant Secretary to the Board. 202.

In the distribution of the business of the office, it depends entirely on the President how far he shall avail himself of the services of the other Commissioners. The unpaid Commissioners seldom take any active part, and are considered rather as Honorary Members, who may be consulted as occasion may arise. Effectually, therefore, the whole responsibility rests with the President. In general changes of the Administration, all the Members of the India Board vacate office, but the unpaid Commissioners are frequently re-appointed. 209.  
204.  
205  
210.  
286.

Under the Act of 1793, the Commissioners are to superintend, direct and control all acts, operations and concerns which in anywise relate to the Civil or Military Government, or to the Administration of the Revenues, of India; but the Committee deem it advisable to refrain from adducing opinions merely hypothetical as to the independent powers which the Law confers on the Board. With respect to all Despatches relating to Peace, War, or Negotiation with any of the Powers of India, which the Board may deem of a secret nature, it is their duty, according to the express terms of the Law, to originate and prepare the Instructions which are sent through the Secret Committee; and, speaking generally, there have been no Secret Despatches but those prepared by the Board. 288.  
413.



287.  
416

Board. Upon any subject whatever, not Commercial, without any reason given, they may require the Court of Directors to prepare a Despatch, within the limited period of 14 days, with which they may deal at their own pleasure, so as to alter all its expressions and its whole purport. For alterations made by the Board, whether in Despatches so prepared, or in those which have been framed by the Court without such directions, the Law requires, as already stated, that reasons at large shall be given.

290

By the Charter Act of 1813, the Rules and Regulations for the good government of the College at Haileybury, and the Military Seminary at Addiscombe, are subject to revision and approval by the Board, and no Order for the establishment of any office, or the appointment of any person to fill the situation of Principal at the College, or Head Master of the Seminary, is valid, until approved by the Board.

291.

The Warrant for nominating a Bishop of Calcutta, or for preparing Letters Patent relating to that See, is countersigned by the President, in which he acts independently of the Court of Directors. The President also countersigns the Warrant of the King approving of the appointment by the Court of Directors of the Governors, and Commanders-in-Chief; as well as the writing or instrument under the Sign Manual by which the King may remove or recall any person from office or employment in India, and vacate and make void Appointments and Commissions there.

The mode in which separation is made between the Political and Commercial Finances of the Company, is, in the terms of the Act of 1813, under the absolute control of the Board.

582-584.

They have also the power of directing permission to be given to any individual to proceed to India, if the Court have previously refused such permission; and the Board are not required in this case to state their reasons.

The mode in which the business is transacted between the Board and the Court has been already described.

1694 1695.

967.

156.

1575.

Considering the multifarious nature of the Company's relations and transactions, it is to be expected that the Correspondence should be voluminous and complicated, comprehending, as it does, not only all that originates in England, and is transmitted to India, but also the record of the Proceedings and Correspondence of the Officers at the several Presidencies, necessary to put the Authorities at home in complete possession of all their acts. The Correspondence comes home in Despatches, and the Explanatory Matter in Books or Volumes. The total number of Folio Volumes received in 21 years, from 1793 to 1813, was 9,094; and from 1814 to 1829, a period of 16 years, the number was 12,414.

From the establishment of the Board in 1784, to 1814, the number of Letters received from the Court by the Board of Commissioners was 1,791; the number sent from them to the Court was 1,195. From 1814 to 1831, 1,967 Letters have been written to, and 2,642 received from, the Board. The number of Drafts sent up to the Board from 1793 to 1813, was 3,958; from 1814 to 1830, 7,962, being an increase of 4,004. There have, moreover, been various References, connected with servants, civil and military, and others, in this country, amounting, between the years 1814 and 1830, to 50,146. The Reports made to the Court by its Committees, apart from details and researches made in framing such Reports, amount to 32,902. From 1813 to the present time, 723 Parliamentary Orders have been served on the Court, requiring Returns of vast extent.

It is represented that the Home Government is overloaded with details ; and that there is nothing so great, and nothing so small, that does not (under the present system) require the sanction of the Supreme Authority. While it is maintained, as a principle, that the Councils of India must be made to confide in the Government at Home, (which salutary purpose can alone be secured by the transactions being duly recorded, and punctually transmitted home by every opportunity,) it does not seem possible that the overwhelming mass of business should be diminished : the only obvious principle of remedy is stated to be a division of labour and responsibility.

In describing the mode in which business is transacted by the Court and the Board collectively, allusions have been made to differences of opinion, which have occasionally arisen ; to a power of Remonstrance on the one hand, and an obligation to give Reasons at large on the other ; and it is held that differences of this nature must operate unfavourably on the Company's interests, in two ways, from the weakness and vacillation which disunion betrays, and from the delay that must take place before the intended measures are adopted. The Act of Parliament prescribes, that the Despatch, when prepared, should be only two months from the time of its leaving the Court of Directors to its being returned thither ; and an Answer has been prepared by the Court, and sent up to the Board, within ten days of the receipt of the Despatch from India ; but it has sometimes happened that questions of importance submitted by the Government of India to the consideration of the Home Authorities, have, from peculiar events, not been answered for a period of two or three years, circumstances in the mean time having so changed that further reference became necessary, and thus a period of many years has elapsed before the adjustment of such questions. The fact of Collision between the co-ordinate authorities is clearly borne out by the Evidence ; while it is also affirmed that the desire of avoiding collision has led, in many instances, to the continued and renewed postponement of Instructions upon important subjects. Hence, although the degree of inconvenience resulting from such collision may be regarded as a matter of mere opinion, and thus be variously estimated, yet it must have its origin in the constitution of the Home Authorities, and the existence of co-ordinate powers. It has also been suggested that, in consequence of the indefinite nature of the several powers of the two authorities, impediment is thrown in the way of communications from Public Servants in India.

A remedy suggested for the evils just alluded to, is, a change of the present system, by vesting the Government in all its branches in one body, or in two bodies, having a very different relation to each other from that which now exists between the Court and the Board, and remodelling the Local Government on the same principles. But, independently of any great change in the system, the Evidence affords various hints respecting modifications which might be beneficially introduced into the existing Government.

The possibility of conducting the business with fewer Directors, and the expediency of reducing their number, have been considered. It is allowed that a diminution of their number would constitute a stronger obligation on the individuals appointed to attend to their duties, as it would impose practically, as well as morally, an additional degree of responsibility : but it is maintained that no real inconvenience arises from the present constitution of the Court, and that its Members could not well be diminished, unless its Commercial and Political Functions were separated more than has yet been done, because the Commercial Depart-

341.  
1694. 1695.

1736. 1737.

160.

1566.

117.

120.

1472.

66. 70. 292. 293. 1261.  
1274. 1275. 1286. 1314.  
1324. 1505. 1601.  
1594.277. 299. 301. 1262.  
1270.

1592.

523. 263. 1099. 1033.  
1471. 1566. 1571.

1581. 1582.

266.

302. 1578.

1597. 1813.  
1816.1306. 1310. 1812.  
1814.

1562.

318.

1454.

ment, with which a large proportion of the business of the Court originates, requires the superintendence of a separate Committee; and though there is a plan suggested for introducing a more marked distinction between the Political and Commercial character of the Company, it is contended that there is a necessity for an interference on the part of the Court as active and extensive as that which at present exists.

1599. 1603.

The advantages and disadvantages of the Change of Directors by rotation have also been considered: it is allowed that, by the existing rule, the Court is frequently deprived of the advice of competent and able men; but if the Directors were to be chosen for life, there would remain no check upon their incapacity or misconduct.

270.

418.

297.

424.

The mode in which the Committee of Correspondence is filled up is liable to a similar objection, because those Members who come late in life from India, and whose talents and experience peculiarly qualify them for taking a part in the Administration, may never be placed on that Committee. The present mode, however, which is grounded on Practice, rather than on any express Law, is said to have its advantages; because, by means of it, a Director becomes practically acquainted with every branch of the Company's affairs, while he is not precluded, by being attached to a subordinate Committee, from affording to the Court the benefit of his more recent knowledge and experience.

298.

264.

268.

As it is allowed that the Court of Directors certainly possess, upon some points, a detailed knowledge, which the Board of Control does not possess, under its present constitution, and with its present establishment, it is not contended that the Board would at once be competent to originate any but the more important Despatches, referring to general principles and the higher subjects of Government. On the authority of the writer of the Political History of India, it has been suggested, that one or two of the Commissioners should always be persons who have served either in the Military or Civil branch of the Company's service abroad. It is also suggested, that whatever the Board is competent to do through the medium of the Secret Committee, might be as well done by direct Despatches, emanating from a Secretary of State for India, addressed to the respective Governors abroad.

269.

It is considered that the reduction recently made in the Salary of the President of the Board, in consequence of which that situation offers a remuneration for talent and ability inferior to that afforded by many other appointments of the same class, is, upon public grounds, most objectionable.

#### LOCAL GOVERNMENT.

IN reporting the Evidence relating to the Local Government, the Committee propose to give an outline, 1st, of its Constitution and Functions; 2d, its Operation, comprising its Efficiency and alleged Defects; 3d, Proposed Alterations and Improvements relating thereto.

172.

336.

There are three Presidencies, Bengal, Madras, and Bombay. In Bengal the Government consists of a Governor General and three Councillors; and at Madras and Bombay of a Governor and the same number of Councillors. The Court of Directors, if they see fit, appoint the Commander-in-Chief at each of the Presidencies to a seat in the Council of the Presidency to which he is attached, in which event, he takes rank next to the Governor, as second in Council. There are two other Councillors, civilians, with the necessary subordinate functionaries. The Civil Mem-  
bers

bers of Council must have resided ten years in India, in the Company's service.

The Governor General has a supreme controlling power over the Governors of Madras and Bombay, who, under certain circumstances, may be suspended for disobedience of orders. He has also the power, if he thinks fit, of proceeding to the subordinate Presidencies, and assuming the chief authority there.

According to the terms of the Act of 1793, the Governor brings forward in Council any business he thinks fit. The discussion upon it may be adjourned twice for 48 hours, but not longer, and then a decision must be pronounced; if the Members of Council accord with the views of the Governor, the decision becomes a measure of Government; if the Members of Council dissent from the Governor, they are to exchange opinions in writing, which are entered upon record. If the Governor still adheres to his own views, he is vested with the power of acting on his own responsibility, placing upon record his reasons for so doing, which are transmitted to this country, with Copies of all the Proceedings. From the operation of this independent power, legislation, and matters judicially before the Council, are the only exceptions.

To the powers of Governor General, those of Captain General have, on one occasion, been superadded. This is an appointment from the King, and confers the complete control over all Military Affairs.

The power therefore of making or enforcing Laws for the government of the respective Presidencies rests in four individuals, viz. the Governor General (the Governor in the cases of Madras and Bombay) and the three Members of Council, subject immediately, in some instances, to the consent of the Supreme Court of Judicature to register their Decree, and, more remotely, to the approval and sanction of the King in Council, the Board of Control, and the Court of Directors.

The general Administration of Public Affairs is carried on by the means of Boards, the object of which is to relieve the Government from the burthen of details. At Calcutta, there are the Boards of Revenue, Salt and Opium, and Trade; and the Military, Marine, and Medical Boards: At Madras, Medical, Military, and Revenue Boards: At Bombay no Revenue Board ever existed, and the Military Board was abolished by Sir John Malcolm.

Concerning the system of Administration by Boards in general, it has been stated, that however plausible they may be in theory, and however useful Boards *might* be made, yet that practically they are inefficient: that they operate as clogs upon business, and that all that is professed to be accomplished by them, might be better attained by the agency of a single individual, is the uniform tenor of the Evidence adduced before the Committee.

With respect to Councils, it is argued, on the one hand, that as they are no check upon the Governor, in any case when he chooses to exercise his independent power, and as the Secretaries of Government and Heads of Departments might probably give him the assistance which Councillors now afford, they might be altogether dispensed with, and the Public at the same time lose no efficient check. On the other hand, it is contended, that they are extremely useful in arranging for the Governor the most material points of Correspondence, and that they relieve him from a load of detail, and would relieve him still more if allowed to decide upon judicial and territorial matters upon their own responsibility; that, in

short, as the Governor is, for the most part, totally unacquainted with Indian Affairs, the assistance of Councillors, of local experience and knowledge, is indispensably requisite to enable him to discharge his duties.

The duties of the Governor General are those which appertain specially to the Presidency of Bengal, and those which relate to the supervision and control of every functionary in India: and if it be true that the Local Administration of Bengal, more immediately confided to the Governor General, is sufficient to engage his whole time and attention, it must necessarily follow, that the still more important business of general Legislation, and general Control, is ill performed; and from this source, it is alleged, arises one class of the evils which pervade the Administration in India. Another class is alleged to have its origin in the nature of the Administration at Home, a system of checks, which operate as clogs on business, and occasion a disunion of authority, under which officers, having the same duties to perform, and the same objects in view, are split into distinct departments, often acting on opposite principles, and coming into perpetual collision with each other.

It has been said, that one of the most important considerations for Parliament is the Improvement of the Government of India in India itself: with this view, and in order to meet the evils already adverted to, it has been proposed, to entrust increased powers to a Local authority by the establishment of one Supreme Government for all India, without the charge of any Local Administration, and by the appointment of Lieutenant Governors at the several Presidencies, with subordinate powers. Under this arrangement it would not be necessary to disturb existing boundaries, although it might be advisable to divide into two the extensive Presidency of Bengal.

Against the adoption of these alterations, it has been urged, that the Local Government of Calcutta, as at present constituted, though it has some defects, is yet fully equal to the task of legislating for the Native Population; that the number of the Regulations passed by the Local Government, since the renewal of the Charter, is small when compared with that of the Laws passed in England during the same period; that it would be dangerous to remove the salutary checks which have hitherto existed in the control exercised by the Home Authorities; and that the business which, on the adoption of the New System, would unavoidably devolve upon the Supreme Government, would, from its extent, be unmanageable.

In contemplating the probable effect on the minds of the Natives, of any extensive change in the present Administration of India, it has been denied that it would be productive of any unfavourable result, or that it would make any impression whatever; their ideas of the Company being exceedingly vague, and their feelings of respect attaching entirely to the Executive power.

## LAW.

THAT the British sway has conferred very considerable benefit on India can hardly be doubted, since under our Government the people enjoy advantages which all history shows they never possessed under their own Princes,—protection from external invasion, and the security of life and property. If these benefits are not duly appreciated, it is because the demoralization, consequent on ages of anarchy and misrule, has rendered them insensible to the blessings of organized society; a state in which the justice and firmness of the governors are sure to become reasons

reasons for disaffection on the part of the governed, because they annihilate their hopes of individual aggrandizement and independence. Hence, with the exception of Bengal Proper, where a general feeling of protection is stated to prevail, the British tenure of India is, for the most part, a tenure of the sword, resting chiefly on the persuasion of our national power, and military strength and discipline. At the same time, it may be matter for attentive investigation, how far the exclusion of the Natives from places of trust and emolument, operates as a cause of discontent, and also how far the influence of the British Name in the Native States is converted by rapacious rulers into an engine of oppression.

The subject of the Legislative Power in India has already, in a great measure, been anticipated in the Summary of the Evidence respecting the Constitution and Powers of the Civil Government, and the proposed Reform of the present system, by the establishment of a Supreme Authority, embracing Executive, Judicial, and Legislative Functions. It therefore only remains to pass under review the existing State of Jurisdiction and of the Courts of Law, the Modifications and Changes which might be beneficially introduced, and the principles which ought to regulate any new Legislative Enactments.

There exist in India at the present time two concurrent, and in some instances, conflicting, systems of Judicature ;—the Company's Courts, and the King's or Supreme Courts.

In the Company's Courts there are three grades of European Judges ; the District, the Provincial, and the Judges of the Sudder Court. Of the Native Judges there are two classes ; Moonsiffs, of whom there are several stationed in the interior of every district ; and Sudder Ameens, established at the same station with the European District Judge. There are also Magistrates, who exercise Civil Jurisdiction under special appointment. The Registrars try and decide such causes as may be referred to them by the Judge.

The jurisdiction of the Supreme Court extends to Europeans generally, and, within a certain limit around the several Presidencies, to Natives also ; but constructively, Natives not so circumstanced have, on many occasions, been brought within its jurisdiction. The jury system is confined entirely within the limits of the Supreme Court. It is made ground of complaint, that the Criminal Law is more severe than that administered beyond this boundary, while the Civil Law also is attended with an expense which has ruined most of the native families of distinction, and borne heavily upon Europeans.

No Regulation made by the Local Government, and affecting individuals within the jurisdiction of the Court, is valid, unless registered by the Court ; a power which has in recent instances been freely exercised, and much beyond the local limits contemplated by the Act of Parliament. Hence collision has arisen between the Local Authorities and the Functionaries of the King's Courts, which has proved a source of great evil and of serious embarrassment to the Government ; nevertheless, objections exist to the abolition of the courts ; while the remedies necessary to correct the evils attached to the operation of the present system are said to be abundantly obvious : 1st, by accurately and strictly defining the jurisdiction of the Supreme Court, or, 2dly, by the establishment of a general Legislative Council, or 3dly, by the appointment of Local Agents with the control of districts, as suggested by Sir Thomas Munro.

The power of Arbitrary Deportation upon alleged charges, without trial, forms another important feature in the Local Administration of India ; concerning

1410. 1420.

1717.

1451. 1453.

615. 619. 815. 842.  
862. 1454. 1468.  
1566. 1571. 1608.

1662.

894. 895.

367.

1519.

1517. 1669.

611. 613. 805. 806.

1351. 1450.

366. 785.

369.

1609.

571. 577.  
505. 610. 1510.  
1511.

cerning which it has become a question whether it might not be suppressed or modified by the introduction of Trial by Jury, without danger to the State.

750. 755-  
1573 1574.  
370.  
371. 376. 749.  
There is also important Evidence with regard to the Code of Criminal Law in force in the Provincial Courts; the reciprocal circumstances of Europeans and Natives with respect to the Administration of Justice; the effects and tendency of the Judicial System actually in operation, as to the security of the persons and property of the Natives; and the expediency of subjecting Englishmen to the jurisdiction of the Provincial Tribunals.

1454. 1700.  
1512. 1518.  
1727.  
585. 589.  
On a large view of the state of Indian Legislation, and of the improvements of which it is susceptible, it is recognised as an indisputable principle, that the interests of the Native Subjects are to be consulted in preference to those of Europeans, whenever the two come in competition; and that therefore the Laws ought to be adapted rather to the feelings and habits of the Natives than to those of Europeans. It is also asserted, that though the Native Law might beneficially be assimilated to British Law in certain points, yet that the principle of British Law could never be made the basis of an Indian Code; and finally, that the rights of the Natives can never be effectually secured otherwise than by such amalgamation; by the appointment of an European Judge to every Zillah Court, with Native Judges as his assistants and assessors; and by the substitution of individual for collective agency.

183. 188. 189.  
1724.  
The provisions for the promulgation of Ordinances and Regulations are described to be effective.

#### NATIVES.

689. 691.  
1479. 1486.  
1373. 1382.  
490. 503. 510.  
691.  
399. 410. 487. 490.  
658. 688. 778.  
1373. 1382. 1572.  
1733.  
888. 893.  
INTIMATELY connected with every plan for the good government of India, and for the introduction of ameliorating changes into the present system, is all that relates to the habits, character, and capacity of the Native Population. It appears that at present they are only employed in subordinate situations in the Revenue, Judicial, and Military Departments. They are said to be sufficiently observant of the practical merits and defects of our system; and to be alive to the grievance of being excluded from a larger share in the Executive Government, a disadvantage which is not considered as compensated by the increased security enjoyed under British protection, compared with the precariousness of all tenure under former Governments: it is amply borne out by the Evidence that such exclusion is not warranted on the score of incapacity for business, or the want of application, or trustworthiness: while it is contended that their admission, under European control, into the higher offices, would have a beneficial effect in correcting the moral obliquities of their general character; would strengthen their attachment to British dominion; would conduce to the better Administration of Justice; and would be productive of a great saving in the Expenses of the Indian Government.

702. 726.  
With a view to the more general identification of the Natives with the Government of India, the encouragement and cultivation of the English Language, to the greatest possible extent, is deemed by one Witness to be highly desirable.

1913.  
A desire for the knowledge of European Science and Literature has, it is declared, been awakened in the Natives by the more recent extension and encouragement of Education among them; and it is urged that Moral and Religious Instruction is, in consequence, of imperious necessity for

for securing the improvement of their Moral Standard, and the advancement of their Political Character.

The proportion of the Hindoo Population to the Mahomedan is stated at eight to one. 1406. 1409.

The expediency of framing a Law for defining and regulating the Civil Rights of Natives, in the case of a change of Religion, is suggested. 896. 898.

It is equally desirable, it is stated, to extend perfect toleration to the Native Christians, and to remove, as far as possible, any disability that can be shown still to exist to their prejudice. 1924.

An interesting Sketch has been given of the State of Christianity in India in the early ages, and also of the Syrian Christians, who have received the greatest assistance and advantage from a College for the instruction of their Priesthood, founded by Colonel Munro, long resident at Travancore, the Students of which are stated, by a clergyman who examined them, to have made great progress in the Latin and Syriac Languages, and in other branches of Literature. 1842.  
1843.

The Roman Syrians have a College at Verapoly, for the education of about 50 Students. 1844.  
1848.

The Roman Syrians and the pure Syrian Churches of Travancore are about equal in numbers, and amount each to between 60,000 and 70,000 souls. 848.  
1849

The failure of Roman-catholic Missionaries is acknowledged by themselves, and attested by other Witnesses ; while the progress of the Protestants appears to be daily becoming more successful. Their judicious plan is to establish Schools, which they have effected both in the North and South of India. The number of Scholars in Bengal alone, amounts to about 50,000. 1850. 1851.  
1854.

This general diffusion of Instruction is producing the best and most salutary effect, not only on the children educated, but on the minds of their parents and neighbours. Female Schools have also been successfully established ; at the different Missionary Stations there were, in 1823, nearly 1,200 female children, and that number has gradually increased to 3,000. 1854.

The proficiency of the Native Catechists is also attested. 1856.

#### ECCLESIASTICAL.

It is stated, that the number of Chaplains at present in actual service is not sufficient for the wants of the people committed to their charge ; and while, in several stations in the interior of India, the duties of a Chaplain do not employ the whole of his time, there are larger stations, such as Military Cantonments, where there is duty for two, if not for three, Chaplains. The want of additional Bishops is also pointed out. 1859.  
1908.  
1860.  
1888. 1891.  
1861. 1909.

While an efficient Church Establishment is recommended, co-extensive with the wants of the European subjects who may be members of that Church, and of such Native Christian subjects as shall be willing and anxious to attach themselves to it, perfect toleration, on the part of Government, to the labours of the Missionaries, is not less strongly recommended, care being had, at the same time, not to afford, on the part of the Government, any direct encouragement to the conversion of the Natives. 1920.  
942.



## PATRONAGE.

73. 81. EAST INDIA Patronage is vested partly in the Crown, partly in the  
307. 311. Directors, and partly in the Governors and Council of the several  
Presidencies.

320. 323. The Board of Control has legally no share in the distribution of Indian  
Patronage; though, practically, the President of the Board, by an ar-  
rangement with the Court of Directors, has a share equal to that of one of  
the Chairs, or double that of a Director.

679. 681. The Patronage exercised in India amounts to a very large share of  
1546. the whole; but the distribution of it is recorded on the proceedings  
1550. 1555. sent home, and it is liable to be vigilantly scrutinized by the Court, and  
by the Board.

929. 930. 954. 959. Promotion is regulated on the principle of seniority as the general rule,  
1618. 1619. and by selection, according to individual merit, as particular exigencies  
864. 865. may require; but in the several Presidencies it is, generally speaking,  
confined to individuals within the Presidency.

667. 672. No public responsibility attaches to the Patronage of the Directors;  
nor do the tests prescribed operate upon the exercise of it any more than  
the desirableness of obtaining competent persons operates upon the dis-  
posal of the patronage in Government offices in this country: Public  
Opinion is said to have as little influence in the one case as in the other.

107. The amount of Patronage is necessarily fluctuating, being regulated by  
660. 666. the demand for Public Servants, arising from casualties or other causes.  
1621. 1624. The number of Civil Servants at the three Presidencies is calculated at  
438. 1,100 or 1,200.

652. 655. To the present mode of Nomination, it is objected, that it gives to India  
84. 98. 476. 483. only an average amount of Talent, or one but a little above mediocrity.  
104. 105. Though there does not appear in the Evidence any imputation upon the  
purity with which the Directors have acted in bestowing their patron-  
age, it seems at the same time agreed, that the nomination by individual  
315. 317. 326. 328. Directors is not the best mode of securing a high standard of Ability  
389. 432. 920. 923. and Qualifications in the Civil Servants; this, it is considered, by one  
1596. Witness at least, might be more surely obtained by public competition.  
1365. On the other hand, an appeal is made to the high testimony borne by  
1556. Mr. Canning to the zeal and ability of the Company's Servants, and also  
1617. more generally to the history of India, in proof that they have hitherto  
682. 683. 924. 925. possessed adequate abilities and qualifications. If a system of competition  
were acted upon, and if the Natives were more extensively appointed to  
Civil Offices, the amount of Patronage, it is stated, would be so abridged,  
1596. that no separate body would be requisite for administering it; and though  
it might be objectionable to vest it in the Crown, it is suggested that it  
might be given to Public Schools and Universities, as the reward of talent  
1326. 1339. and acquirement. What system of competition could be adopted so as  
to prevent all favouritism in the selection, is admitted to be deserving of  
1531. serious consideration. An argument, brought forward by one Witness,  
against any plan different from the present, is, that checks could not be  
1545. 1550. so effectually established to meet the abuses to which the exercise of such  
extensive Patronage, at home and in India, is liable. In the event of the  
1597. 1598. 1815. Patronage being taken away from the Court of Directors, a pecuniary  
compensation has been suggested.

The Committee have inquired into the state of Education in the Civil Service, and among the Natives of India.

## 1.—EDUCATION: CIVIL SERVICE.

CONCERNING the Qualifications required from a Writer, previously to his appointment, the Evidence is not very specific; they are fixed by Regulations framed by the Court of Directors and the Board of Commissioners. On an average young men proceed to India at the age of 18: 22 is recommended as the most eligible age.

It is stated by the Principal, whose Evidence is very full and detailed, that the design of the East India College at Haileybury, which was established in 1806, was, to supply the great body of Civil Servants with an amount of qualification commensurate with the extent and importance of their functions in India, which qualification could not, at the time that the College was founded, have been otherwise procured. The nature of the combined Course of Study, the impracticability of acquiring it without a special Institution, more particularly for Oriental Literature, and the tests required of the parties nominated, all form subjects of Evidence. It is considered that it would be advisable to increase the age of Students, by admitting them between the ages of 18 and 22. The Act of 1826 is believed not to have answered the expectations of its authors, and to have shaken and mutilated the whole Collegiate System. The College, it is stated by the Principal, has had various difficulties to contend with, but has, in a great measure, fairly answered what could reasonably have been expected from it on its original foundation; and it is held that, with revised tests, and some modifications in its present machinery, it would be competent to stand even against the Universities of England, in so far as relates to the due Qualification of Civil Servants for India. The proficiency of the Scholars is well attested by those who have experienced its benefits and watched its progress. The capabilities are pointed out which the College possesses, of admitting alterations, so as to render the Education more efficient and satisfactory; and other modes of Qualification for the Civil Service are suggested. It is maintained that the Civil Servants have been better educated since the establishment of the College than they were before; and the fact, that the most important posts have been filled in India by those who have been most distinguished for proficiency at Haileybury, is adduced in proof of this opinion: while the tenor of other parts of the Evidence would show, that where the operation of the system has not been absolutely prejudicial to the habits and views of the Students, every object contemplated by the College, might have been more effectually obtained by other means.

On arriving in India, the young men of the Bengal Service enter the College at Calcutta, with the view of perfecting themselves in Languages, the elements of which have been acquired at Haileybury, where the education is of a more general nature. While at the College at Calcutta, they are maintained at the Company's expense. Of this Institution (which was from the commencement strongly objected to by the Court of Directors, on the score of expense) it is remarked, that "it has been a source of more debt than knowledge in the Civil Service, and an expensive establishment for the end proposed." It was not uncommon in former times for young men to leave the College with a debt of from 50,000 to a lac of rupees; but this evil may in part be attributed to the mode of appointment. The Institution has lately undergone a revision. It has been useful in providing books, by which the acquisition of the Native Languages has been greatly facilitated, but beyond this it is

1430.

considered that the Institution is disadvantageous to the Public Service. If abolished, its buildings might be converted to Public Offices.

448. 645. 651.  
1369.

It appears that the Study of Languages is most readily promoted by sending the young men, directly on their arrival, into the Provinces, and attaching them to some Public Office, as was formerly the practice.

637. 641.

1564. 1565.

At Bombay there is no Institution corresponding to that at Calcutta. At Madras there is a Collegiate Institution, but no European Professors, as formerly at Calcutta; the Examiners are gentlemen in the Company's Civil Service, but they receive no pay. Proficiency in the Native Languages is made a condition of promotion.

656. 657.

765. 769.

774. 775.

1527. 1529.

With a view to raise the standard of attainment, and afford fuller scope for selection, not only is public competition in England recommended, but it is also proposed, with the same view, that the whole Service should be originally Military. Among other objections against this plan, it is urged that it evinces a total departure from the principles at present laid down by the Legislature for conducting the two branches of Indian Service.

## 2.—EDUCATION: NATIVES.

395. 398. 695. 697.  
936. 1534. 1538.

By the Act of Parliament of 1813, the Company are obliged, out of Surplus Territorial Revenue, to expend annually a Lac of Rupees in promoting the Education of the Natives of India; in some years less than that has been expended, but in others twice and even five times the stipulated amount.

939. 941. 1383. 1405.

392.

502.

1213. 1226.

937. 949. 953.

399. 410. 491. 702.  
726. 1630.

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949. 1495. 1628.  
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It is on all hands allowed, that the general cultivation of the English Language is most highly desirable, both with a view to the introduction of the Natives into Places of Trust, and as a powerful means of operating favourably on their Habits and Character; and that, moreover, a great partiality prevails in favour of the English Language and Literature, in both of which many Natives have made considerable progress; but that the subject has not hitherto met with that consideration and encouragement from the Government which its importance seems to merit. Though facilities might be multiplied at a small expense, there is a great want of proper Teachers; and in the Government Schools, with few exceptions, it is not taught at all.

714. 726. 939.

It has been suggested, that the most powerful stimulus would be, to make a certain degree of proficiency a condition of Qualification for Civil Employment.

392.

692. 701.

935.

When, however, the immensity of the field is regarded, it is not to be concluded, that active steps have not been taken, however limited, for disseminating the benefits of Education among the Natives. Moslem and Hindoo Colleges have been established, or placed on a more efficient footing, in Calcutta, Delhi, Agra, and Benares. Schools have been established in other parts of the country; and Seminaries, founded by individuals, have received aid. For more full information on this interesting subject, the Committee beg to refer to the Memoir prepared by Mr. Fisher, of the India House, and to the Letters from the Court of Directors to their several Governments in India.

Public Appx. (I.)

492. 499.

518. 520.

1487. 1495.

With regard to the Madras Presidency, it was proposed, by Sir Thomas Munro, to establish Native Schools in every Tehsildary. The Master was to be paid, partly by a Stipend from Government, and partly by Fees from the Scholars. If fully followed up, this plan might, to a certain extent, furnish the means of a common Education to the Natives.

On this head of Native Education, the Evidence is full and circumstantial.

Testimony has been adduced concerning the Acquirements and Abilities of the Anglo-Indian Population, concluding with a recommendation for the removal, in their case, of all invidious distinction, and exclusion from Office.

1237.

## THE PRESS.

THE Evidence is detailed and circumstantial respecting the state of the European and Indian Press; the Regulations relative thereto; and the subjects of Discussion, Correspondents, Circulation, Price, Transmission, and Postage of the Newspapers. The peculiarities which attach to the several Presidencies are remarked, and also the Discussions and Proceedings to which Articles in the Journals, obnoxious to the Local Government, give rise.

590. 597.

972. 1000. 1050. 1070.

1071. 1117. 1147.

1166. 1173. 1174. 1184.

1071. 1117. 1159. 1247.

The Native Press at Calcutta is under the same restrictions as the English Press there, but its operation is not very extensive. At Bombay it is perfectly free.

1202. 1207.

861.

1209. 1212.

The present checks on the Press lie in the withdrawal of the Government Licence, which is revocable at pleasure, with or without inquiry or notice; and in the power of Arbitrary Deportation. How far the existence of this power is necessary, in the present state of India, is amply discussed; and, with reference to the Offences of the Press, the possibility of obtaining a fair and impartial Trial by Jury is confidently asserted.

1071. 1208.

1154. 1164.

598. 610.

On the one part, it is argued, that the free discussion of Government measures, by the Press, or otherwise, must be productive of good, both in maturing Legislative Enactments, and in controlling the conduct of Public Functionaries.

846. 861.

1148. 1153.

On the other part, it is maintained, that the Freedom of the Press is inconsistent with the condition of the People, and incompatible with the nature of the Government.

1633. 1644.

Since the Evidence was taken, intelligence has been received of the removal of the Censorship at Madras.

## INTERCOURSE WITH INDIA, AND SETTLEMENT OF EUROPEANS.

MUCH valuable Evidence has been received upon this important subject in the Revenue, Judicial, and Commercial Departments of the Inquiry, as well as in the Public.

As early as 1766 the Court of Directors prohibited British-born Subjects from holding Lands, the prohibition being chiefly directed against their own Servants, who, about that time, were in the habit of holding Public Lands and Farms. In 1783-84 it was stated, in a Report of the Committee of the House of Commons, that the Regulation was chiefly applicable to the Company's Servants, who, it was considered, might convert their influence and power to improper purposes, and that it ought not to be equally applicable to men not in the Company's service.

The Evidence shows, that as far as holding Lands in Farni, to a great extent the prohibition is merely nominal; Europeans hold them in the names of Natives, and in their names also they sue and are sued in the Courts.

These Lands are principally held for the cultivation of Indigo, which has improved of late years in Behar and Bengal, where the Factories are

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The Evidence shows, that as far as holding Lands in Farm, to a great extent the prohibition is merely nominal; Europeans hold them in the names of Natives, and in their names also they sue and are sued in the Courts.

These Lands are principally held for the cultivation of Indigo, which has improved of late years in Behar and Bengal, where the Factories are

chiefly established. There are also a few in North and South Arcot, which are two of the principal Indigo Districts.

The introduction of Capital into these Districts, and the Employment of a great number of People, have been beneficial; but most of the Witnesses do not recommend the uncontrolled and indiscriminate admission of British-born Subjects into our Indian Possessions. It is not doubted that the skill, enterprize, and capital of Europeans might be made to confer important benefits upon the country in the development of its vast resources. The chief difficulty opposed to their free admission appears to be considered to arise out of the defective state of the Judicial Establishments, civil and criminal. Facilities of Intercourse have of late years been greatly increased. License to proceed to India is said never to be withheld if the Applicant can show any reason for wishing to proceed to India other than mere speculation. Many instances have occurred in which a refusal on the part of the Court of Directors has been superseded by the Board of Control.

The Report of the Committee of 1813 shows that serious apprehensions were then entertained by some distinguished individuals, who had held high stations in India, that the opening of the Trade would lead to a dangerous influx of Europeans. But the Returns from 1815 to 1828 show, that in the space of 13 years, the increase of British-born Subjects in India, not in the service of the East India Company, does not exceed 515, and that these reside principally at the three Presidencies, or are employed on board the ships belonging to the respective ports. The Committee, conceiving that the question of the admission of Europeans to hold lands in India is one which deserves the deep consideration of the Indian Government, and of the ruling authorities in England, have made selection of very important documents, with a view of assisting the judgment of the House in reference to the various alterations of system which are recommended in the Evidence. In these Papers the opinions of the Local Government will be found to be fully recorded.

561. 563. 734. 755.  
649. 1658.

566. 570.  
744 748. 756.  
1001. 1004.

1001. 1007.

578. 584.

1325.

In 1815, total number - 1,501  
In 1828 - ditto - - 2,016

515

General Appendix.

MEMBERS BEFORE WHOM THE FOLLOWING  
EVIDENCE WAS TAKEN.

Sir James Macdonald.

Mr. Marshall.

Mr. Labouchere.

Mr. Stewart Mackenzie.

Mr. Dixon.

Lord Viscount Sandon.

Mr. Charles Russell.

Mr. John Wood.

Mr. Astell.

Lord Cavendish.

Mr. Irving.

Mr. John Stanley.

Sir Robert Inglis.



# LIST OF WITNESSES.

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## *Jovis, 15<sup>o</sup> die Februarii 1832 :*

Benjamin Scutt Jones, Esq. - - p. 20

## *Veneris, 17<sup>o</sup> die Februarii 1832 :*

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## *Martis, 21<sup>o</sup> die Februarii 1832 :*

James Mill, Esq. - - - p. 42

## *Martis, 28<sup>o</sup> die Februarii 1832 :*

John Sullivan, Esq. - - - p. 60

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# FIRST PART.

## SECTION I.

### PRELIMINARY REMARKS; AND GENERAL LEGISLATIVE PROVISIONS, FOR ENACTING AND PROMULGATING A CODE OF LAWS AND REGULATIONS.

**T**HE system of law and regulation, which was established in the year 1793, for the internal administration of the provinces immediately subject to the authority of the Governor General in Council, at Fort William, in Bengal, owes its origin and foundation to the political wisdom, justice, and humanity, of Marquis Cornwallis; whose exalted character will be alike perpetuated, by his glorious achievements in arms; by a life devoted to the interests and honor of his country; and by this memorial of his able, virtuous, and beneficent administration in India.

Origin of the existing code of Regulations and established system of internal government, in the provinces subject to the presidency of Fort William, in Bengal.

Previously to the year 1793 the territorial possessions of the East India Company were without a general code of British laws and regulations. Many rules and orders were indeed passed by successive governments, (from the appointment of Mr. Hastings to be Governor of Bengal in 1772,) for the administration of justice, the collection of revenue, and other objects of a public nature. During the preceding twelve years some regulations had also been printed, with translations in the country languages: but others still remained in manuscript; and those printed were, for the most part, on detached papers, without any prescribed form or order; and consequently not easily referred to, even by the officers of government; much less by the people at large, who had no means of procuring them in a collective state, or of becoming acquainted with such of them as had not been promulgated in the current languages.

State of rules and orders in force before the year 1793.

A primary and essential duty of every just government towards its subjects, that of publishing and enforcing an equitable system of law, adapted to their actual condition and circumstances, and calculated to protect them in the secure enjoyment of their rights, natural and acquired; “a rule of civil conduct, commanding what is right, and prohibiting what is wrong;”

Imperfect system of municipal law in consequence.

as municipal law is defined and explained by Blackstone;<sup>1</sup> or as Cicero has expressed it, "*Sanctio justa, jubens honesta, et prohibens contraria*;"<sup>2</sup> was thus in a great degree omitted, or imperfectly performed, towards the natives of an extensive territory; which, by cession or conquest, had, through the chartered agency of the East India Company, become subject to the crown and sovereignty of Great Britain.

Ascribable to circumstances which have attended the establishment of the British empire in the provinces referred to. Bengal dependent upon the presidency of Fort St. George, till 1700. And transactions of the Company's officers to a later period, chiefly commercial.

Nature of Firman granted by the Emperor of Hindostan, in 1717.

Independency of the Company's Settlement at Calcutta, established by the Treaty with Suráj-oò-Dou-lah, in 1757:

This will not appear extraordinary, if the circumstances, which attended the establishment of the British authority in the territories referred to, be considered. From the year 1634, when the ships of the London East India Company, under the direction of their factors at Masulipatam, and the control of their President and Council at Surat, "first obtained a right to enter "the Ganges," or rather "to resort to the Port of Piple," at the entrance of the western branch of that river, under a firman from the Emperor *Sháh-jehan*,<sup>3</sup> till the year 1700, when Calcutta, and its adjacent villages, Sootanuttty and Govindpoor, (the taloocdary right to which, subject to an annual revenue of 1195 rupees, the prince Azeem-oò-Shán, grandson of Aúrunzéb, and Soobahdar of Bengal, Behar, and Orissa, allowed the Company's agents to purchase, in the year 1698,) were separated from the presidency of Fort St. George, and constituted a distinct presidency, under the title of "Fort William," and the superintendence of a President and Council, who were accountable only to the Direction in England,<sup>4</sup> as well as for some years subsequent to that arrangement, and to the union of the London and English East India Companies in 1708, the transactions of the local agents employed by both Companies in this part of India were chiefly commercial: and although the United Company, in the year 1717,<sup>5</sup> obtained a firman from the Emperor Furukhseer, granting them, besides privileges of trade, permission to purchase the taloocdary of thirty-eight additional villages, contiguous to the three before held by them, subject to an annual revenue of 8121 rupees; (which grant was frustrated by the influence and opposition of the Soobahdar Jáfur Khán;) no independent authority was thereby conveyed to them; nor does any appear to have been claimed under it; or under the *husb-oòl-hoòkms*<sup>6</sup> which were issued by the king's minister in conformity with it.

The treaty with Suráj-oò-Dou-lah, in February, 1757, after the recapture of Calcutta, by the fourth article of which the Company were "allowed to "fortify Calcutta in such manner as they might esteem proper," and by the fifth article of which it was stipulated, "that siccas be coined at Alinagur " (Calcutta) in the same manner as at Moorshedabad;"<sup>7</sup> concluding with a

<sup>1</sup> See Blackstone's second Introductory section, on "the nature of Laws in general."

<sup>2</sup> 11 Philip. 12, quoted also in Blackstone, b. i. c. 1.

<sup>3</sup> Dated 2nd February, 1734. See Bruce's Annals of the East India Company. Quarto Ed. 1810. Vol. i. page 404.

<sup>4</sup> Bruce's Annals. Vol. i. p. 300, and sequel.

<sup>5</sup> Through the embassy of Messrs. Surman and Stephenson; accompanied by an Armenian merchant, named Surhad, and Mr. Hamilton, whose medical assistance to the Emperor promoted the object of their embassy. See Orme, vol. ii. page 19, &c. and a copy and translation of the firman granted by Furukhseer, in the Appendix to "Bolts on India Affairs."

<sup>6</sup> Corresponding grants, literally "according to order." Translations of them, and of the firman, are annexed to the first report of the select committee appointed by the House of Commons, in 1772, to enquire into the nature, state, and condition of the East India Company, and of the British affairs in the East Indies. The reports of this committee, and of the committee of secrecy appointed in the same year, contain much authentic and valuable information, respecting the acquisition and early administration of these provinces, not readily to be found elsewhere.

<sup>7</sup> The Company's right to coin gold and silver in Calcutta, equal in fineness and

"promise in behalf of the English nation, and of the English Company, that from henceforth all hostilities shall cease in Bengal, and the English will always remain in peace and friendship with the Newáb, as long as these articles are kept in force, and remain unviolated;" may be considered to have established the independency of the Company's settlement at Calcutta. And the victory gained at the memorable battle of Plassey, on the 23d of June of the same year, with the consequent elevation of Jáfur Alee Khán to the government of Bengal, Behar, and Orissa, by Colonel Clive and the British army under his command, must be deemed a virtual subjugation of those provinces to the arms and sovereignty of Great Britain. In the previous treaty, however, which had been entered into with Jáfur Alee Khán,<sup>1</sup> the cession of the French factories, with an extension of the Company's zemindary, six hundred yards without the ditch of Calcutta, and to the land lying south of Calcutta as far as Culpee, had alone been stipulated for; besides a confirmation of the former agreement with Suráj-oó-Doulah, and a consideration for the public and private property plundered by him at the capture of Calcutta, in 1756; with the further conditions, that whenever the Newáb should demand the assistance of the English, he should be at the charge of maintaining them; and that he should not erect any new fortifications below Hooghly, near the river Ganges.

And Provinces of Bengal, Behar, and Orissa, virtually subjugated to the Sovereignty of Great Britain by the battle of Plassey, and its consequences. But not acknowledged by the previous Treaty with Jáfur Alee Khán.

In the treaty concluded with the Newáb Meer Mohummud Cásim Khán, on the 27th September, 1760, it was agreed, that the *Needbút*<sup>2</sup> of the Soobahdary of Bengal, Behar, and Orissa, should be conferred upon him; and that he should succeed Jáfur Alee Khán in the government; that the English army should be ready to assist him in the management of all affairs; and that the lands of the chuklahs (districts) of Burdwan, Midnapore, and Chittagong, should be assigned for all charges of the Company, and the army, including provisions for the field. The nature of this assignment is further explained in the sunnuds from the Soobahdar, wherein the above districts are stated to be granted to the English Company, for the maintenance of a body of troops, to be entertained for the protection of the royal dominions; and the landholders, tenants, and public officers, are required to attend and pay the stated revenues to the persons appointed by the English Company; and implicitly submit in all things to their authority. This therefore was a full and complete cession of the three districts specified; and in the treaty with Jáfur Alee Khán, for his reinstatement, dated the 10th day of July, 1763,<sup>3</sup> he "granted and confirmed to the Company, for defraying the expenses of their troops, the chuklahs of Burdwan, Midnapore, and Chittagong, which were before ceded for the same purpose."

Districts of Burdwan, Midnapore, and Chittagong, ceded by Cásim Alee Khán, in 1760:

And cession confirmed by treaty with Jáfur Alee Khán, in 1763.

After the expulsion of Cásim Alee Khán, and the decisive battle of Buxar, on the 23d October, 1764, which, by the defeat of Shoójáá-oó-Doulah, Soo-

British Power finally established by the battle of Buxar.

weight to the Mohurs and rupees coined at Moorshedabad, had been previously acknowledged in a grant from Jáfur Khán, alias Mohabut Jung. Vide Translation of it in No. 4, Appendix to second Report of Select Committee, 1772.

<sup>1</sup> A translation of this treaty is inserted in the Appendix to "Verelst's State of Bengal," and in other publications. Also in the Appendix, No. 4, to the Second Report of the Select Committee, 1772.

<sup>2</sup> On the 4th June, 1757. The work mentioned in the preceding note contains a translation of this treaty also. And it is likewise inserted in Appendix, No. 5, to the First Report of the Select Committee, 1772.

<sup>3</sup> Station of Deputy. Translations of the treaty, and of the sunnuds issued in pursuance of it, will be found in the Appendix to the treatise before mentioned. The Musnud of the Soobah being afterwards abdicated by Jáfur Alee Khán, Meer Mohummud Cásim, otherwise called Cásim Alee Khán, was raised to it, by Mr. Vansittart and Colonel Caillaud, on the 20th October, 1760.

<sup>4</sup> See the Appendix before noticed.

Deewany grant obtained from the King, Shâh Aâlum, in 1765;

With confirmation of former cession and grant from the Soobahdars.

Agreements with Nujum-oô-Doûlah, in 1765.

The Nazim of Bengal, a State pensioner only from this period.

The civil and military power transferred to the East India Company, and to the British Empire.

bahdar of Oud, finally established the British power to the banks of the Caramnassa, and placed under its protection the unfortunate Shâh Aâlum, nominal successor to the throne of Delhee; the Deewany of Bengal, Behar, and Orissa, including the administration of the public revenue, and of civil justice, with the whole of the powers exercised by the Soobah Deewan, under the Mogul constitution; and in this instance, the further special privilege of retaining the surplus revenue of the above provinces, after remitting the sum of twenty-six lacks of rupees per annum to the royal treasury, and providing for the expenses of the Nizamut, was granted as a free gift and ultumgha, to the Company, by firmans from the King, dated the 12th August, 1765. A firman was also granted, at the same time, for the chuklahs of Burdwan, Midnapore, and Chittagong, ceded by Cásim Alee Khán; and for the twenty-four pergunnahs, of which the zemindary right had been granted by Jâfur Alee Khán; confirming them to the Company, as a free gift and ultumgha, in perpetuity. The Newáb Nujum-oô-Doûlah, (who, on the death of his father, Jâfur Alee Khán, in February, 1765, had succeeded to the Soobahdary of Bengal, Behar, and Orissa, under an agreement<sup>1</sup> to commit the chief management of all affairs to a Naib Soobahdar, appointed with the advice of the Governor and Council; as well as to appoint and dismiss all officers employed in the collection of the revenues, with the approbation of the Governor and Council;) by a further agreement, bearing date the 30th September, 1765, acknowledged the king's grant of the Deewany to the Company; and agreed to accept the annual sum of sicca rupees 53,86,131 as an adequate allowance for the support of the Nizamut, viz. rupees 17,78,854 for his own household expenses, servants, &c. and the remaining 36,07,277 for the maintenance of such horses, sepoy, peons, burkundazes, &c. as might be thought necessary for his sewary, and the support of his dignity; should such an expense (the amount of which, not exceeding the above sum, to be disbursed through the Naib chosen by the English government) be hereafter found requisite.

From this period the Nazim of Bengal, though, from motives of justice and expediency, allowed to retain the name, and in some measure the dignities, of his office, can be regarded only as a pensioner of state. The civil and military power of the country, with the resources for maintaining it, were transferred to the East India Company; and, through their means, to the British Empire.<sup>2</sup> It was not, however, judged advisable, either by the local government, or by the Court of Directors, and perhaps was not practicable in the actual state of the Company's service, at the time of their acquiring the

<sup>1</sup> A royal grant in perpetuity, under the Emperor's red seal, from which its name is derived. Translations of the firmans issued for the three provinces, separately and collectively, for the districts ceded by Cásim Alee Khán, and for the zemindary of the twenty-four pergunnahs obtained by the first treaty with Jâfur Alee Khán, are included in Verelst's Appendix, as well as in the Appendix to the First Report of the Select Committee, 1772.

<sup>2</sup> Executed on the 25th February, 1765. See translations of this, and of his further agreement in the same year, No. 52 and 60, in Verelst's Appendix; also in the Appendix to the first Report of the Select Committee, 1772.

<sup>3</sup> That the sovereignty of the British crown and legislature extends to all acquisitions made by the East India Company, has never been questioned; and it has been determined by the House of Commons "that all acquisitions, territories, &c. made by arms, "or by treaty, by the subjects of the realm, do, of right, belong to the State." But this decision does not affect the legal acknowledged title of the Company to all proprietary rights, acquired by purchase, or by any other lawful means, except by arms or treaty, under their perpetual incorporation by Charter, founded upon Acts of Parliament. Vide "Plans for the Government and Trade of Great Britain in the East Indies." P. 190, &c.

Deewany, to vest the immediate administration of the revenue, or of civil and criminal justice, in European officers.' A resident at the Durbar, who inspected the management of the Naib Deewan, Mohummud Rezá Khán, and his coadjutors, Doolubram and Jugut Seet, at Moorshedabad; and the chief of Patna, who superintended the collections of the province of Behar, under the immediate management of Shitráb Ráy; maintained an imperfect control, for five years, over the civil administration of the districts included in the Deewany grant; whilst the zemindary lands of Calcutta, and the twenty-four pergunnahs, and the ceded districts of Burdwan, Midnapore, and Chittagong, were superintended by the covenanted servants of the Company. In 1769 European supervisors were appointed, with powers of controlling the native officers employed in collecting the revenue, or administering justice, in different parts of the country; and councils, with superior authority, were at the same time established at Moorshedabad and Patna, subordinate to the Supreme Council at the Presidency. It was not however till the year 1772, when, in consequence of the determination of the Court of Directors,<sup>1</sup> "to stand forth as Deewan, and by the agency of the Company's servants "to take upon themselves the entire care and management of the revenues," the office of Naib Deewan was abolished, that the efficient administration of the internal government of these provinces was committed to British agency. No time was then lost in adopting measures to correct abuses; in providing against undue exactions; and in making such arrangements as circumstances admitted, for a more regular distribution of justice. The Committee of Circuit, headed by the Governor (Mr. Hastings), digested a plan for this purpose; the rules of which were stated to have been framed with a view to adapt them "to the manners and understanding of the people, and exigencies "of the country, adhering, as closely as possible, to their ancient usages and "institutions;" and which, with the regulations subsequently passed, for the establishment and jurisdiction of courts of civil justice, will be more particularly noticed in the next section of this analysis.

In the mean time it is necessary to mention concisely the acts of the British Legislature, which have an immediate relation to the subject of the present section; commencing with the regulating act of 1773, which was founded on an inquiry of Parliament, relative to the management of the affairs of the East India Company, made in the preceding year.

By this statute (13 George III. chapter 63.) it was enacted, "that for "the government of the presidency of Fort William in Bengal, there shall "be appointed a Governor General, and four Counsellors; and that the "whole civil and military government of the said presidency, and also the "ordering, management, and government, of all the territorial acquisitions "and revenues in the kingdoms of Bengal, Behar, and Orissa, shall, during "such time as the territorial acquisitions and revenues shall remain in the "possession of the United Company, be vested in the said Governor General and Council; in like manner, to all intents and purposes whatsoever, "as the same are, or at any time heretofore might have been, exercised by "the President and Council, or Select Committee, in the said kingdoms." The Governor General and Council were further invested with the "power

Native administration continued, under an imperfect European control, from 1765 to 1772.

Office of Naib Deewan abolished, under orders from the Court of Directors; and the Company's servants employed in executing the Deewany functions. Measures adopted, and judicial arrangements made, in consequence.

Acts of the British Legislature, which relate to the subject of this section.

Regulating Act of 1773; viz. Statute 13 Geo. III. cap. 63.

<sup>1</sup> See the reasons fully detailed in the correspondence between the Honorable Court of Directors, and the President and Council, or Select Committee, at Fort William; contained in the Reports of the House of Commons already referred to; also in the first chapter of Verelst's Narrative.

<sup>2</sup> Communicated in their letter to the President and Council at Fort William, dated 28th August, 1771. Vide Fifth Report of the Committee of Secresy, 1772.

<sup>3</sup> Vide Appendix No. 2, to the Sixth Report of the Committee of Secresy, 1773,

"of superintending and controlling the government and management of the "presidencies of Madras, Bombay, and Bencoolen;" under certain restrictions; and the King was empowered "to erect and establish a supreme court "of judicature at Fort William, to consist of a Chief Justice and three other "judges, being barristers of England or Ireland, of not less than five years "standing;" instead of the Mayor's court, established by Letters Patent from his Majesty George II, which had been found insufficient for the due administration of justice in the actual state and condition of this presidency.

The laws of England extended to this country, as far as applicable, by the statute abovementioned, which established the Supreme Court at Calcutta; and by the subsequent Acts, 21 cap. 70, 24 cap. 25, and 26 cap. 57, of Geo. III.

By the Statute above mentioned, and by the subsequent explanatory act of 21 George III. chapter 70, which more accurately defined the jurisdiction of the supreme court; with a reservation of the laws and usages of the native inhabitants of Calcutta, in cases of "inheritance, and succession to lands, "rents, and goods, and all matters of contract and dealing between party "and party, as well as the rights and authorities of fathers and masters of "families;" the benefits of the laws of England, as far as applicable to this country, were extended by the legislature to all persons residing within the town of Calcutta; as well as to British subjects (natives of Great Britain, or their descendants) resident in any part of the provinces of Bengal, Behar, and Orissa. Certain descriptions of the natives of India, though not inhabitants of the town of Calcutta, on account of their being employed by the Company, or by any of his Majesty's British subjects, were also declared, by the acts above mentioned, amenable to the jurisdiction of the supreme court, in criminal cases; as well as in actions for wrongs or trespasses; and in civil suits by agreement of parties in writing to submit the same to the decision of that court; the jurisdiction of which was further extended over all his Majesty's British subjects in India, or elsewhere within the limits of the Company's exclusive trade, by the Statutes 24 George III. chapter 25, and 26 George III. chapter 57.

More general introduction of British laws incompatible with local circumstances.

But the fixed habits, manners, and prejudices, and the long-established customs, of the people of India, formed under the spirit and administration of an arbitrary government, totally opposite in principle and practice to that of England, would not admit of a more general application of British laws to the inhabitants of this country; who not only are ignorant of the language in which those laws are written; but could not possibly acquire a knowledge of our complex, though excellent, system of municipal law; composed, in part, of general and local English customs; partly of the civil and canon laws, adopted in particular jurisdictions; and partly of the voluminous statutes, enacted by the King's Majesty, with the advice and consent of Parliament, during a period of more than five hundred years. The impossibility of introducing English laws, as the general standard of judicial decision in these provinces, without violating the fundamental principle of all civil laws, that they ought to be "suitable to the genius of the people, and to all the circumstances in which they may be placed," has been ably stated by Mr. Verelst,<sup>1</sup> whose local knowledge and character (unsullied amidst universal corruption, as testified, to his honor, by Lord Clive,) entitle his opinion to respect. His sentiments are also supported by those of Sir John Shore (now Lord Teignmouth); whose perfect acquaintance with the inhabitants of India, added to his high and well-merited reputation, his eminent public and private virtues, must ever give weight to his deliberate suggestion, that "the grand object of

<sup>1</sup> See Blackstone's third Introductory section, on "the Laws of England," p. 84.

<sup>2</sup> Vattel, book i. chap. 3. Also Montesquieu's Spirit of Laws, book i. chap. 3. *et passim*.

<sup>3</sup> In the fifth chapter of his "State of Bengal," expressly upon this subject.

"our government in this country should be to conciliate the minds of the natives; by allowing them the free enjoyment of all their prejudices; and "by securing to them their rights and property." Moreover, when the provinces of Bengal, Behar, and Orissa, were virtually conquered by the British arms, as well as when the civil government of them was formally vested in the Company, by the Deewany grant, and the agreement with the Newáb Nujum-ó-Dóúlah in 1765, the inhabitants, Mahomedans as well as Hindoos, were in possession of their respective written laws; under which they had acquired property, by descent, purchase, gift, and other modes of acquisition; and which, from their religious tenets and prejudices, they had been educated and habituated to regard and venerate as sacred.<sup>1</sup> The Mahomedan government, which preceded the British authority in India, had indeed established its own criminal law, to the exclusion of that of the Hindoos. But from the long period, during which it had prevailed, it was (in its principal and specific provisions at least,) become generally known; and afforded, as far as it was regularly administered, a settled uniform rule for criminal prosecution, trial, and punishment.

Written laws in force when these provinces were acquired by the Company.

The British Legislature therefore, when its attention was called to examine and regulate the management of the affairs of the East India Company, as set forth in the preambles to the Statutes above referred to; instead of extending the local and complicated laws of England to the remote, populous, and long-civilised territories, which had been gradually acquired by the East India Company, under former Acts of Parliament, and Charters from the King; wisely resolved to limit the administration of English law, over persons who, from their distant situation, and other circumstances, could not be admitted to the whole of the rights and privileges of British subjects;<sup>2</sup> and judged it sufficient to enact the salutary provisions contained in those Statutes; by the former of which (13 George III. chapter 63, sections 36 and 37,) it was declared lawful "for the Governor General and Council of the United Company's settlements at Fort William in Bengal, from time to time, to make "and issue such rules, ordinances, and regulations, for the good order and "civil government of the said United Company's settlement at Fort William "aforesaid, and other factories and places subordinate, or to be subordinate "thereto, as shall be deemed just and reasonable; such rules, ordinances, "and regulations, not being repugnant to the laws of the realm." And by the latter Act (21 Geo. III. chap. 70, section 23,) it was enacted "that the "Governor General and Council shall have power and authority from time "to time to frame regulations for the provincial courts and councils; and "shall, within six months after the making of the said regulations, transmit

Wise provisions of the British legislature in consequence.

13 Geo. III. cap. 63, § 36, 37. Governor General and Council empowered to make rules, ordinances, and regulations, for the good order and civil government of the Company's settlement at Fort William. 21 Geo. III. cap. 70, § 23

<sup>1</sup> See his "Remarks on the mode of administering justice to the natives in Bengal; and on the collection of the revenues," printed in the sixth volume of "India Papers," 1787.

<sup>2</sup> Let it not be forgotten, in justice to Mr. Hastings, that the knowledge we possess of these laws, originated from his liberal, and politic, encouragement to the compilation, and translation, of a code of Hindoo Law; and to the translation of an approved commentary upon the Mahomedan Law.

<sup>3</sup> Were further authorities necessary, besides those which have been quoted, to show the impolicy of extending the operation of English laws in India, beyond the limits to which they are now confined; and within which they are administered with the greatest public advantage, by the Supreme Court of Judicature at Calcutta; Mr. Hastings, Marquis Cornwallis, and indeed every experienced person, who has held any public station in India, might be likewise appealed to. But the Legislature itself is evidently convinced of this truth; and there can be no doubt that it will be confirmed, as opportunity may offer, by the judges of the supreme court; whose object has been rather to meliorate, than extend, its influence; to check expense and delay, and thereby to promote its means of justice, rather than to enlarge its jurisdiction.



And to frame regulations for the provincial courts and councils.

"or cause to be transmitted, copies of the said regulations to the Court of Directors, and to one of His Majesty's principal Secretaries of State; which regulations His Majesty in Council may disallow or amend; and the said regulations, if not disallowed within two years, shall be of force and authority to direct the said provincial courts, according to the tenor of the said amendments, provided the same do not produce any new expense to the suitors in the said courts." It was further provided in the act first mentioned, that the rules, ordinances, and regulations, made by the Governor General and Council, should "not be valid, or of any force or effect, until the same be duly registered and published in the supreme court of judicature, with the consent and approbation of the said court; which registry shall not be made until the expiration of twenty days after the same shall be openly published, and a copy thereof affixed in some conspicuous part of the court-house, or place where the said supreme court shall be held; and from and immediately after such registry, as aforesaid, the same shall be good and valid in law." But this and other restrictions, in the two clauses quoted, must be considered, under subsequent acts of parliament, to have exclusive reference to the town of Calcutta, technically, though somewhat inaccurately, denominated the settlement of Fort William, and its subordinate factories; to provide for the good order of which by a local power to frame any requisite rules and regulations, not repugnant to the laws of England, appears indeed to have been the principal, if not the only, object of the thirty-sixth and thirty-seventh sections of the Statute 13 George III. chapter 63.<sup>1</sup>

Authority of the Government General, and of the Governments at Fort St. George and Bombay, to make general rules and regulations for the good order and civil government of these settlements, further recognized by 33 Geo. III. cap. 52: Which determined the system of government for the British territories in India, under the renewal of the Company's charter in 1793.

The authority of the Governor General in Council at Fort William, and the subordinate power of the Governor and Council at Fort St. George and Bombay, "to make any general rule or regulation for the good order and civil government of those settlements respectively," were further recognized by the Statute 33 George III, chapter 52, which defined the constitution and powers of the Board of Commissioners for the affairs of India, (originally established by 24 George III. chapter 25,) "to superintend, direct, and control, all acts, operations, and concerns, which in any wise relate to the civil or military government, or revenues, of the British territorial possessions in the East Indies," and determined the general system of government for the British territories in India; to be conducted, on the renewal of the Company's charter, in 1793, by an efficient local authority, vested with ample powers, but subject to high responsibility in England, and acting under the immediate direction of the Honorable Court of Directors, the control of the Right Honorable the Board of Commissioners to be appointed by his Majesty, and the occasional legislative interposition of the Parliament of the United Kingdom.

<sup>1</sup> The Governor in Council at Fort St. George, and the Governor in Council at Bombay, have been since invested with similar power to frame Regulations for the provincial courts and councils of their respective presidencies, by clause 11 of the Statute, 39 and 40 Geo. III. chap. 79; and clause 3 of 47 Geo. III. chap. 68.

<sup>2</sup> The various opinions entertained of the extent of the legislative powers, meant to be vested in the Governor General and Council by the act of 1773, with the uncertainty of even a Committee of the House of Commons as to the exact intention of the 36th section of that act, may be seen in the first Report of the Select Committee appointed in 1781, and its Appendix. But the provisions, that the rules and ordinances to be made under that section, should not be repugnant to the laws of the realm, and should be registered and published in the supreme court, with the approbation of that court, appear applicable only to a jurisdiction where the laws of England are administered. And all necessity for a more extensive construction of any part of the Statute 13 George III. ch. 63, is now superseded by the explicit declarations of the legislature in 21 George III. ch. 70. and 37 George III. ch. 113.

The following additional and express sanction to the exercise of a local power of legislation at this presidency was subsequently declared by the eighth section of the Act 37 George III. cap. 142, passed on the 20th day of July, 1797: "Whereas certain regulations for the better administration of justice among the native inhabitants and others, being within the provinces of Bengal, Behar, and Orissa, have been from time to time framed by the Governor General in Council in Bengal; and among other regulations it has been established and declared, as essential to the future prosperity of the British territories in Bengal, that all regulations passed by Government, affecting the rights, properties, or persons of the subjects, should be formed into a regular code; and printed, with translations in the country languages; and that the grounds of every regulation be prefixed to it; and that the courts of justice within the provinces be bound to regulate their decisions by the rules and ordinances which such regulations may contain; whereby the native inhabitants may be made acquainted with the privileges and immunities granted to them by the British Government; and the mode of obtaining speedy redress for any infringement of the same: and whereas it is essential that so wise and salutary a provision should be strictly observed, and that it should not be in the power of the Governor General in Council to neglect or to dispense with the same; be it therefore enacted, that all regulations which shall be issued and framed by the Governor General in Council at Fort William in Bengal, affecting the rights, persons, or property of the natives, or of any other individuals who may be amenable to the provincial courts of justice, shall be registered in the judicial department, and formed into a regular code, and printed, with translations in the country languages, and that the grounds of each regulation shall be prefixed to it; and all the provincial courts of judicature shall be, and they are hereby directed to be, bound by, and to regulate their decisions by, such rules and ordinances as shall be contained in the said regulations; and the said Governor General in Council shall annually transmit to the Court of Directors of the East India Company ten copies of such regulations as may be passed in each year; and the same number to the Board of Commissioners for the affairs of India."

Additional and express sanction given to the exercise of a local power of legislation at this presidency, by 37 George III. chap. 142, § 8.

The tenor, and for the most part, the terms, of the above section, were adopted from Regulation 41, 1793, entitled "A regulation for forming into a regular code all regulations that may be enacted for the internal government of the British territories in Bengal;" the substance of which was thus incorporated with the laws of the British empire; and, supported upon this firm basis, it may be deemed the corner stone of the system of regulation and polity, for the internal government of these provinces, which was instituted, in the year 1793, by Marquis Cornwallis. It may also be justly considered to have established a constitution for the native inhabitants of this dependent subordinate kingdom,<sup>1</sup> the most beneficial for them, and for the sovereign

The tenor of the above section adopted by the legislature from Regulation 41, 1793.

The substance of which was thus incorporated with the laws of the British empire. And is the corner

<sup>1</sup> The section referred to is still in force, under the renewal of the Company's charter for a further period of twenty years, by the Act 53 Geo. III. cap. 155, passed on the 21st July, 1813; by the sixty-sixth section of which it is enacted, that the Court of Directors shall annually lay before Parliament, with the annual Accounts required to be submitted, "one copy of all the Regulations made by their several Governments in India; and transmitted to them in pursuance of the Acts 37 Geo. III. cap. 142; 39 and 40 Geo. III. cap. 79; and 47 Geo. III. cap. 68."

<sup>2</sup> As Ireland was before the late Union: See Blackstone's fourth section, on the countries subject to the laws of England. His remarks on the state of Ireland, before its Parliament was united with that of Great Britain; on the laws enacted by the superior State, which, being generally calculated for its own internal government, do not extend to its distant dependent territories, bearing no part in the legislature, except

stone of the system founded by Marquis Cornwallis, in 1793. Constitution thereby established for the native inhabitants of this dependent kingdom.

state, which the situation and circumstances of both will admit. It is impracticable to extend to India, held as a foreign dependency, the laws and constitution of Great Britain. Nor would such laws and constitution, (the inestimable privilege, and dearest right, of those who have the happiness to be born and educated under them,) be suitable or acceptable, if they could be so extended, to a people whose "religion, laws, customs, and manners, (to use the words of an intelligent, though anonymous writer,)" "have fixed such insuperable barriers to all assimilation, that they can never be overcome, if "so wild a project should ever be attempted." It may however be truly said, that the Acts of Parliament now in force, and the existing codes of regulations, enacted by the governments of Fort William, Fort St. George, and Bombay, (which preserve to Hindoos and Mahomedans their respective laws, in suits regarding succession, inheritance, marriage, and cast, and all religious usages and institutions) with the provision made for such further laws and regulations as circumstances and experience may, from time to time, show to be required, have realized and established the system, which, in the well known work, intitled "Plans for the government and trade of Great Britain "in the East Indies," is stated to combine the "prevailing opinions respecting "the future government of India, and regulation of trade to the East Indies," viz. "That a system should be formed, which shall preserve, as much as "possibly can be done, their institutions and laws to the natives of Hindoo- "stan; and attempt them with the mild spirit of the British Government. "That this system should vest in the state its just rights of sovereignty over "our territorial possessions in India, of superintending and controlling all "matters of a financial, civil, and military nature. And that it should pre- "serve the trade to the Company in all its branches; but give to the exe- "cutive government a proper authority, to regulate their proceedings; bound "by a positive responsibility to Parliament."

Provisions of Regulation 41, 1793, extend-

By Regulation 41, 1793, (which was extended to the province of Benares\* by Section 4, Regulation 1, 1795, and re-enacted for the ceded pro-

when the sovereign legislative power sees it necessary to extend its care to any of its subordinate dominions; and on the nature and constitution of a dependent State, held under what is usually called the right of conquest, but in reason, and civil policy, under an express or tacit compact, to treat the conquered, on their acknowledgment of the victor's authority, as subjects; are so pertinent and applicable to the British territories in India, considered as a dependency on the Crown of Great Britain, that they well merit attention; and would have been inserted in this place, if they had not appeared too long for a note.

\* The Author of "A short Review of the British Government in India, and of the "state of the Country before the Company acquired the grant of the Deewany," published in 1790.

\* The sovereignty of this province was ceded to the Company by the fifth article of the treaty with the Vizeer, Asuf-oô-Doûlah, dated 21st May, 1775. But the system of internal administration, adopted in Bengal, Behar, and Orissa, in 1793, was not extended to Benares till 1795, under an agreement with the Rajah, Mahipnarain, bearing date the 27th October, 1794. At the same time that by Section 4, Reg. 1, 1795, the Rules contained in Regulation 41, 1793, "forming into a regular code all "Regulations that may be enacted for the internal government of the British territo- "ries in Bengal," were extended to the province of Benares, that no doubt might be entertained what Regulations so enacted were meant to extend to that province, it was declared that no such Regulation "shall be considered to extend, either wholly "or in part, to the province of Benares, unless the title to the Regulation, or the Re- "gulation itself, or some other Regulation, shall declare the whole or a part of it to "extend to that province." It was further provided by Section 89, Regulation 22, 1795, that several rules detailed in the preceding section of that regulation, (passed from the year 1781, when the British Government first interfered in the interior administration of the province of Benares, till the abolition of the office of Resident at

vines by Regulation 1, 1803),<sup>1</sup> it is enacted, with other subsidiary provisions, that "every rule or order that may be passed by the Governor General in Council, regarding the administration of justice, the imposition or levying of taxes, or of duties on commerce, the collection of the public revenue assessed upon the lands, the rights and tenures of the proprietors and cultivators of the soil, the provision of the Company's investment, the manufacture of salt, or opium, and generally all regulations affecting, in any respect, the rights, persons, or property, of the natives, or any individuals who may be amenable to the provincial courts of judicature, shall be recorded in the judicial department; and there framed into a regulation, and printed and published;" in a prescribed form, with translations in the current languages of the country.<sup>2</sup> That the regulations passed annually

ed to Benares by Reg. 1, 1795; and re-enacted for the ceded provinces, by Reg. 1, 1803. Section 2.

Benares, in the year 1795,) "are to continue in force, with the exception of the whole, or any part of such rules as have been, or shall be, either expressly repealed or altered by, or may be inconsistent with, any provision or provisions, in any regulation declared to extend to the province of Benares, and printed and published in the manner prescribed in Regulation 41, 1793."

<sup>1</sup> The *ceded provinces* referred to in Regulation 1, 1803, are those ceded to the East India Company by the Newab Vizeer, on the 10th November, 1801, and divided into seven zillahs, or districts, by Section 2, Reg. 2, 1803; viz. Moradabad, Bareilly, Etawah, Furruckabad, Cawnpore, (or Kanhpore,) Allahabad, and Goruckpore. But in an enlarged sense the term may be considered to include the district of Bundelcund, (or Boondélkhund,) which was ceded to the Company by the Peshwa, on the 16th December, 1803; and the districts of Saharunpore, (north and south) Allyghur and Agra; which, with the city of Dehli, and the territory contiguous to it, assigned for the support of the late King, Shah Aalum, and originally denominated Zillah Paniput, were ceded by Doulut Ráó Sindhéa, on the 30th December, 1803. The territories last mentioned, viz. those ceded by Doulut Ráó, are designated in the Regulations of 1804, and subsequent years, *the conquered provinces in the Dooab, and on the right bank of the river Jumna*. By Section 4, Reg. 8, 1805, the city of Dehli, and the conquered territory situated on the right bank of the river Jumna, the revenues of which were assigned to his Majesty Shah Aalum, "are declared not subject to any of the laws or regulations of the British Government, printed and published in the manner prescribed in Regulation 1, 1803." But, with this exception, the rules contained in Reg. 1, 1803, "for forming into a regular code all regulations which may be enacted for the internal government of the provinces ceded by the Newab Vizeer," were, by Section 2, Reg. 8, 1805, "extended to the conquered provinces situated within the Dooab, and on the right bank of the river Jumna;" as well as "to the territories ceded to the Honorable the English East India Company in Bundelcund by the Peishwah." The whole of the laws and regulations, established for the internal government of the provinces ceded by the Newab Vizeer, in 1801, which had not been already extended to the conquered provinces situated within the Dooab, and on the right bank of the river Jumna, or to the territory in Bundelcund ceded by the Peshwa, were also extended, with amendments, to those territories, by Regulation 8, 1805. It may be added, in this place, that the general provisions of Regulation 41, 1793, as well as the specific rules enacted for the administration of civil and criminal justice in the provinces of Bengal, Behar, and Orissa, have been extended, (with exceptions detailed in the Sequel of this work) by Section 5, Reg. 4, 1804, Section 13, Reg. 13, 1805, and Section 11, Reg. 14, 1805, to the district of Cuttack (or Kutuk) and its dependent Purgunahs, (Puttespore, Kumardichour, and Bogaee, in Zillah Midnapore,) which were ceded to the East India Company by the Rajah of Berar, after the surrender of the fort and town of Cuttack to the British arms on the 14th October, 1803.

<sup>2</sup> Translations in the Persian and Bengal languages are prescribed in Section 15, Reg. 41, 1793, for the lower provinces (Bengal, Behar, and Orissa); and translations in the Persian and Hindostanee languages, were originally required, by Section 5, Reg. 1, 1803, for the upper provinces, ceded by the Newab Vizeer; but the Hindostanee version not having been found useful, except to persons acquainted with the Persian language and therefore able to read the Persian version, it was discontinued by Section 4, Reg. 7, 1813. The following rule for promulgating the Regulations in

Section 13.

shall be numbered ; and divided into sections, and clauses ; so as to constitute a regular code. That every regulation shall have a title expressing the subject of it ; and a preamble stating the reasons for the enactment of it. That if any regulation shall repeal or modify a former regulation, the reasons for such repeal or modification, shall be detailed in the preamble. And that “ the “ civil and criminal courts of justice shall be guided in their proceedings and “ decisions, by the regulations framed and transmitted to them as directed, “ and by no other.” It is further provided, that in the English regulations, as well as in the translations of them into the languages of the country, the same designations and terms shall be applied to the same descriptions of persons and things ; in order that rights, property, tenures, privileges, deeds, courts, processes, offices, officers, and generally all persons and things, may be uniformly described throughout the code. That the translator of the regulations, whenever he shall have occasion to insert the designation or name of any person, or thing, that he may have reason to believe will not be intelligible to the natives in general, and which may not have been used, and explained, in the translates of any former regulation, shall, in the first passage in which such word or term may occur, subjoin an explanation of it ; that, upon its recurring, no doubt may be entertained as to its true meaning and import. That he shall also translate the regulations into plain and easy language ; and, as far as may be consistent with a preservation of the true meaning and spirit of them, shall adopt the idiom of the native languages ; instead of giving a close and verbal translation, which must necessarily be obscure, and often unintelligible. That “ one part of a regulation is to “ be construed by another, so that the whole may stand.” That “ if any regulation shall be passed, differing from a former regulation, either wholly or “ partially, the new regulation is to be considered a virtual repeal of the old “ one, as far as it may differ from the latter, provided that the new regulation be couched in negative terms ; or by its matter necessarily imply a “ negative.” And, lastly, that “ if a regulation, which rescinds another regulation, is itself afterwards rescinded, the original regulation is to be considered as revived, without any formal declaration to that purpose.”

Section 19.

Section 20.

Section 21.

the country languages, was prescribed in Section 31, Reg. 8, 1805, for the ceded and conquered provinces ; and extended to the other provinces by Section 12, Reg. 11, 1806. “ On receipt of translations of the regulations in the country languages, the “ zillah and city judges and magistrates shall cause the same to be publicly read in “ their cutcherries ; and shall require the native pleaders of their respective courts to “ take copies of the translations of any regulations which relate, directly or indirectly, “ to the administration of civil justice. The judges shall also cause the copies, which “ they are required to furnish to the cauzies stationed in the several towns and per- “ gunnahs within their respective jurisdictions, to be read and published, for general “ information, at the cutcherries of the native commissioners, empowered to act as “ munsiffs, and of the police darogahs, or tehseeldars in charge of the police.” It is scarcely necessary to remark, that a strict observance of this rule will materially promote the important objects of the general legislative provisions stated in the first section of this work. Under the provisions of the Regulations which have been cited, “ the “ civil and criminal courts of justice are to be guided, in their proceedings and decisions, by the regulations which may be framed and transmitted to them as therein “ directed.” But unless the regulations, so transmitted, are published for general information, in a language known to the natives of the country, it is evident that they must, in many instances, if enforced, have the operation of retrospective laws, to the serious injury of the parties concerned.

<sup>1</sup> The principal *subsidiary provisions* in Regulations 41, 1793, and 1, 1803, which have not been specifically stated, are contained in Sections 8 to 12, to the following effect : “ The subject of every section and clause to be inserted opposite to it, in the margin. Every regulation to be printed on paper of the same size. The regulations to be distributed, as they are passed and printed, in such proportions as the Governor

The principles on which this fundamental regulation was grounded, and the objects intended by it, must be obvious, after what has been stated of the want of a general and published system of municipal law, at the time when this provision for it was made. In the preamble, it is declared "essential to the future prosperity of the British territories in Bengal, that all regulations, which may be passed by government, affecting in any respect the rights, persons, or property of their subjects, should be formed into a regular code; and printed with translations in the country languages: that the grounds, on which each regulation may be enacted, should be prefixed to it; and that the courts of justice should be bound to regulate their decisions by the rules and ordinances which those regulations may contain." It is added, that "a code of regulations, framed upon the above principles, will enable individuals to render themselves acquainted with the laws, upon which the security of the many inestimable privileges and immunities, granted to them by the British Government, depends; and the mode of obtaining speedy redress against every infringement of them; the courts of justice will be able to apply the regulations according to their true intent and import; future administrations will have the means of judging how far regulations have been productive of the desired effect; and, when necessary, to modify or alter them, as from experience may be found advisable; new regulations will not be made, nor those which may exist be repealed, without due deliberation; and the causes of the future decline or prosperity of these provinces will always be traceable in the code to their source." It may further be observed, that by the enactment of this regulation, and by the institution of civil and criminal courts of justice, to be guided by the regulations framed and published in conformity with it, *and by no other*, an object, which in all countries has been held of the highest importance, for the protection of the person and property of the subject, that of administering justice by the means of judicial officers, independent of the legislative and executive authorities of the State, has been attained and secured for this country, in as great a degree as the circumstances of it admit. Constituted as the courts of justice now are, and bound as the judges are by oath, "to administer justice conformably to the regulations, that have been, or may be, passed by the Governor General in Council, to the best of their ability, knowledge, and judgment, without fear, favor, promise, or hope of reward;" restricted also, as they are by oath, from being concerned, directly or indirectly, in any commercial transactions; as well as from deriving any emoluments or advantages from their stations, excepting such as the "orders of government do, or may, authorize them to receive;" and liberal as their fixed and authorized allowances now are, such as to remove every shadow of pretence for deviating, in the slightest degree, from the sacred obligations imposed upon them by their oaths, by the laws and regulations, by the public trusts committed to them, by their honor and character, and by every principle of religion and morality; it may be pronounced with confidence, that effectual and sufficient provision (under the vigilant care of government to select proper persons for administering the laws, and to make public examples of any who may dare to violate them,) has been made, by

Principles of the above regulation, declared in its preamble.

Separation of judicial, from legislative and executive authorities, effected by this regulation, and by institution of courts of justice, on the principles stated.

General in Council shall direct, among the Courts of Justice, the Boards of Revenue and Trade, the collectors of the land-revenue and customs, the commercial residents and salt agents, and other public officers. At the expiration of each year a copious index, to the regulations, passed during the course of it, to be prepared. A certain number of the English regulations, and of those in the country languages, to be bound up, in volumes, with their respective indexes. Ten of the English copies, with indexes, to be transmitted to the Honorable Court of Directors; and ten to the Board of Commissioners for the affairs of India.

the system now established, to extend to the numerous and industrious inhabitants of this remote, but valuable portion of the British empire, the important benefit, enjoyed by the European subjects of the same state; a pure, and impartial administration of justice: or, as emphatically expressed in an address from Marquis Wellesley to the students of the College of Fort William; "that primary object of all good government, the greatest blessing attainable by any people, an impartial administration of just law."

Provisions for the proposition of new regulations to Government, in Reg. 20, 1793; extended to Benares by Reg. 29, 1795; and re-enacted for ceded provinces by Reg. 9, 1803. Section 2.

Section 15.

That the Governor General in Council may be apprized of such general or local regulations, as the magistrates, or any of the civil or criminal courts of judicature, may deem it advisable to propose, respecting matters coming within their cognizance, the judges of the whole of those courts, as well as the magistrates of the several zillahs (districts) and cities, are empowered by Regulation 20, 1793, (extended to Benares by Regulation 29, 1795, and re-enacted for the ceded provinces by Regulation 9, 1803.) "to propose regulations regarding any matters coming within their cognizance;" under prescribed rules for drawing out the same in the form directed by the regulation before noticed; and for submitting them, when so prepared, through the proper official channel, for the sentiments of the superior courts, in the first instance; and ultimately for the consideration of the Governor General in Council; to whom is reserved a discretion "to reject or adopt any regulation that may be submitted to him; or to pass such other regulation as may appear to him proper." The same power of proposing any new regulation, regarding matters within the cognizance of the officers of revenue, is vested in the Board of Revenue and the collectors of districts, by Section 31, Regulation 7, 1799, (extended to Benares by Section 28, Regulation 5, 1800; and to the ceded provinces by the last Section of Regulation 26, 1803;) and though not expressly provided for, the same means of bringing forward any

Sections 3 to 14 contain the detailed provisions of the regulations specified. Of these, sections 3 to 10 relate to such regulations as may be proposed by a zillah or city judge or magistrate; sections 11 to 13, to those proposed by a provincial court of appeal, or circuit, or by any judge of these courts; and section 14 to regulations proposed by the court of sudder dewanny, or nizamut adawlut. They are, in substance, as follows: "All proposed regulations, by whatever authority, are to be drawn in the form, and agreeably to the rules, prescribed in Regulations 41, 1793, and 1, 1803." If not so drawn, they are to be returned for correction, to the court, or officer, by whom they may have been proposed. The zillah and city judges and magistrates are to transmit (through their registers or assistants) the draught of every regulation proposed by them to the provincial court of the division; either civil or criminal, according to the subject of the regulation; and such court is to forward it to the sudder dewanny or nizamut adawlut, with a letter stating its approval, or disapproval, with the grounds thereof; or if the provincial court should approve the regulation in part only, it is to forward, with the proposed draught, a separate draught framed agreeably to the opinion of the provincial court, or of any judge or judges of that court; and a letter stating the reasons which may have induced the suggested alteration. In like manner the provincial courts of appeal and circuit are to submit the draughts of any regulations proposed by themselves, or by any member of their respective courts, with a copy of their proceedings on any difference of opinion, to the court of sudder dewanny or nizamut adawlut. That court, after calling for any further information which it may deem requisite, either from a zillah or city judge or magistrate, or from a provincial court, is to submit the whole of the documents, and proceedings received by it, for the decision of the Governor General in Council; with a letter, stating the court's approval or disapproval of the proposed regulation, and the grounds thereof; as well as the draught of an amended regulation, if the court shall deem it advisable to alter the proposed draught, or draughts, received by it. With regard to any proposed regulations which may originate with the court of sudder dewanny or nizamut adawlut, it is required only that they be drawn in the prescribed form.

new regulations, which local knowledge and experience may suggest, are understood to be open to every other department of the public service. The following further provisions were made by Regulation 10, 1796, (extended to Benares in the first instance, and re-enacted for the ceded provinces by Regulation 22, 1803,) "for the guidance of the courts of justice, in cases of difference of opinion on the meaning and construction of the regulations."

"§ 2. In all instances wherein a precept issued by a provincial court of appeal, or a court of circuit, to a zillah or city judge or magistrate, shall appear to such judge or magistrate to be contrary to, or unwarranted by the existing regulations, he is authorized to state to the provincial court, or court of circuit, in what respects he considers their precept to be in deviation from the regulations, and suspend execution till receipt of a second precept in reply to his objections. But if the second precept of the provincial court, or court of circuit, in reply to the objections of the zillah or city judge or magistrate, shall confirm their first precept in whole or in part, and shall require the zillah or city judge or magistrate to execute the same without further reference, he shall immediately comply with such requisition. In case however the second precept of the provincial court, or court of circuit, should not satisfy the zillah or city judge or magistrate, that the regulations have been rightly construed by the provincial court, or court of circuit, he is at liberty at the same time that he certifies the execution of the order of the provincial court, or court of circuit, to request that they will transmit copies of their precepts to him, and his returns thereto, with such other papers as may be necessary for the information of the circumstances of the case, to the court of sudder dewanny adawlut, or the court of nizamat adawlut, according as the case in question may relate to the civil or criminal department; and the provincial court or court of circuit shall accordingly transmit such papers, as requested, without any unnecessary delay. Provided nevertheless that nothing in this regulation be understood to authorize any zillah or city judge or magistrate to question the propriety of any order issued by a provincial court, or court of circuit, in cases clearly left to the discretion and judgment of the provincial court, or court of circuit, by the regulations; the reference to them, and eventually to the courts of sudder dewanny and nizamat adawlut, meant to be authorized by this regulation, being confined to cases in which the sense of the regulations, from a difference of construction or otherwise, may appear doubtful and uncertain."

Further provisions for securing an uniform construction of the existing regulations, in Reg. 10, 1796, re-enacted for the ceded provinces, by Reg. 22, 1803. Section 2.

"§ 3. In all instances wherein a reference to the court of sudder dewanny adawlut, or the nizamat adawlut, may be made under the preceding rule, the determination of those courts, who are empowered to prescribe the forms and conduct to be observed by the provincial, zillah, and city courts of dewanny adawlut, the courts of circuit, and the zillah and city magistrates, in all cases provided for by the regulations, agreeably to their construction thereof, is to be held final and conclusive. § 4. Should any doubt occur to the sudder dewanny adawlut, or the nizamat adawlut, with respect to the meaning of any part of the regulations, or should it appear to them, on occasion of any reference from the provincial, zillah, or city courts, the courts of circuit, or the zillah or city magistrates, that the regulations do not sufficiently provide for the case submitted to their decision, they are, in

Section 3.

Section 4.

<sup>1</sup> On the 4th May, 1797, in answer to a reference from the Judge of Ghazee-pore, respecting a decree passed by him and reversed by the provincial court; he was informed by the court of sudder dewanny adawlut, that "the reference which the judges are authorized to call upon the provincial courts to make, under Reg. 10, 1796, supposes that the difference arises, not on facts, but on constructions of the regulations founded on facts admitted, or decided, by the provincial courts."



"the former case, to report the circumstances of it to the Governor General in Council, that a new regulation may be framed in explanation of such doubt; and in the latter case, are to propose a new regulation in the manner prescribed by Regulation 20, 1793."

Concluding observation on the legislative provisions, recited in this section.

It would be superfluous to offer any further comment, on the wisdom, policy, and utility, of the legislative provisions, thus enacted, for framing, promulgating, and enforcing a practical and consistent code of provincial laws and regulations, which constitute the ground-work of the system of internal government now established throughout the territories immediately subject to the presidency of Fort William; founded, as already observed, upon the still broader basis of British law; and it may be said, cemented with the spirit of the British constitution. It appeared proper, in this preliminary section, to state concisely, the gradual establishment of sovereign authority in the Company's territorial possessions under this presidency; the relative situation of these possessions, as forming a constituent part, and dependent kingdom, of the British empire, governed, for political and commercial purposes, through the managers, and local agents, of a chartered corporation, under the control of the executive and legislative powers of the state; and the declared sanction of Parliament, which has given the force and authority of law, within the jurisdiction of the Governor General in Council at Fort William, to the regulations that form the subject of this analysis. It will be sufficient to add the following apposite remark of an eminent author on the law of nature and nations.<sup>1</sup> "There is but one way of forming a civil code, either consistent with common sense, or that has ever been practised in any country; namely, that of gradually building up the law, in proportion as the facts arise which it is to regulate." The regulations which have, from time to time, been enacted by the British Government in India, illustrate the truth of this remark; which also satisfactorily explains, why no code of laws could, at once, be rendered so complete, and perfect, as not to require addition or alteration.

<sup>1</sup> Sir James Mackintosh, in his discourse on the study of the law of nature and nations, introductory to a course of lectures on that science. From the extensive knowledge displayed in this discourse, as well as from its classical language, and the known abilities of the writer, it is much to be regretted that his course of lectures was not published. It would, doubtless, have furnished ample grounds of the conviction expressed by him, "that public lectures, which have been used in most ages and countries, to teach the elements of almost every part of learning, are the most convenient mode in which these elements can be taught; that they are the best adapted for the important purposes of awakening the attention of the student; of abridging his labor; of guiding his enquiries; of relieving the tediousness of private study; and of impressing on his recollection the principles of science." I am happy in being able to add, at the time of revising the first volume of this Analysis (1820), that Sir James Mackintosh is engaged to instruct the students at Hertford College, as Professor of general polity and the laws of England.

## SECTION II.

### COURTS OF CIVIL JUSTICE.

AN eminent writer upon political economy<sup>1</sup> has stated the first duty of the sovereign, in every civilized state, to be "that of protecting the society from the violence and invasion of other independent societies;" and his second duty to be "that of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it; " or the duty of establishing an exact administration of justice." The former of these obligations is foreign to the subject and design of this analysis. Of the latter, such part as relates to the duty of enacting and publishing an equitable system of law, has been set forth, imperfectly, but, it is hoped, sufficiently for the object intended, in the preceding section. The purpose of this will be, to consider the second branch of the public obligation stated, that of providing for the due execution of the laws; particularly of those which relate to the redress of private wrongs, or civil justice; the consideration of such as regard the punishment and prevention of public wrongs and offences, or criminal justice and police, being reserved for the succeeding section.

Obligation upon the ruling power, in every state, to administer justice.

Civil justice the subject of the present section.

In every country, and under every form of government, an efficient administration of justice, to protect from violence, and secure from injury, the natural and civil rights of the subject, is manifestly the duty, as it is also the evident interest, of the governing power. "This obligation flows from the end, and very contract of civil society."<sup>2</sup> Protection and allegiance are reciprocal.<sup>3</sup> And whether the British possessions in India were acquired by grant, cession, or conquest, the natives are equally entitled, in return for their obedience and contributions, to the common right of all subjects, security of person and property; as far as the same can be maintained by a system of good laws well administered. Such an administration must, at the same time, promote the prosperity of the country; the advantages to be de-

The due administration of a just system of law, as much the interest, as it is the duty, of the governing power.

<sup>1</sup> A. Smith, in the fifth book of his admirable "Inquiry into the Nature and Causes of the Wealth of Nations."

<sup>2</sup> Vattel, book i. chap. xiii.

<sup>3</sup> Blackstone, book i. chap. x. "Allegiance is the tie, or *ligamen*, which binds the subject to the King, in return for that protection which the King affords the subject."

rived from it by the East India Company ; and the permanent interests and policy of the British nation. In proportion as the inhabitants are secured against wrong to their persons and property, their industry will be exerted in the extension of agriculture, manufactures, and commerce. As these are extended, the resources of the country must be increased. And if the people experience the benefits of good government, in the free exercise of their religion ;<sup>1</sup> in the protection of their persons from injury ; and in the safe enjoyment of their property ; they must be better satisfied with the government under which they enjoy these substantial benefits, than they could be under a system of persecution, oppression, and injustice ; or under any system less calculated to produce their ease and happiness.

Influence of  
above principles  
on the  
British admin-  
istration in  
India

These obvious truths, and just principles, appear to have influenced, in a greater or less degree, the British administration in India, from the time of its first operative interference in the government of the country ; and there can be no ground of doubt, that justice has been more impartially administered in the civil courts established since the year 1772 ; when it was resolved, (as already noticed,) to execute the functions incident to the Deewany grant of 1765, through the agency of the Company's servants ; than in the courts before established by the Mahomedan government ; of which a Com-

<sup>1</sup> Every believer in Christianity, as the only religion founded upon divine revelation, and calculated to promote the temporal welfare, as well as the eternal happiness of mankind, must earnestly hope that the natives of India, Mahomedan and Hindoo, will ultimately be convinced of the error and evil tendency of their present superstitions ; and be persuaded by Christian instruction and example to receive the truth and blessings of the Gospel. It has accordingly been declared by the legislature of Great Britain, on the last renewal of the charter of the East India Company, (by the statute 53. Geo. III. cap. 155.) that " it is the duty of this country to promote the interest and happiness " of the native inhabitants of the British dominions in India ; and such measures ought " to be adopted as may tend to the introduction among them of useful knowledge, and of " religious and moral improvement ; and in furtherance of the above objects, sufficient " facilities ought to be afforded by law to persons desirous of going to and remaining in " India, for the purpose of accomplishing these benevolent designs, so as the authority " of the local Governments, respecting the intercourse of Europeans with the interior of " the country, be preserved." But it is added, as a further provision, that " the principles of the British Government, on which the natives of India have hitherto relied " for the free exercise of their religion, be inviolably maintained." On this important point, I take the occasion to express my full concurrence in the judicious and just observations which were published in the year 1808, by the well known and highly respected author of a pamphlet, entitled *Considerations on the practicability, policy, and obligation, of communicating to the natives of India the knowledge of Christianity*. He observes, (in page 23 of the pamphlet referred to,) that " it has been the invariable " policy of every British administration in Bengal, to protect the natives of that country in the free exercise of their respective religions, and to pay a due attention to " their laws and local customs. It is a policy founded on wisdom and justice from " which we ought never to depart." And after stating his sentiments of what may and should be done, consistently with this fundamental principle, and with the declared sense of the legislature, " to promote the happiness of our Eastern fellow subjects ;" and " to impart to them the blessings of our superior attainments in religion and morality ;" he concludes, as follows :—" Anxious as I am that the natives of India should " become Christians, from a regard for their temporal happiness and eternal welfare, " I know that this is not to be effected by violence, nor by undue influence : and al- " though I consider this country bound by the strongest obligations of duty and inter- " est, which will ever be found inseparable, to afford them the means of moral and " religious instruction, I have no wish to limit that toleration which has hitherto been " observed with respect to their religion, laws, and customs. On the contrary, I " hold a perseverance in the system of toleration not only as just in itself, but as es- " sentially necessary to facilitate the means used for their conversion ; and these " means should be conciliatory, under the guidance of prudence and discretion."

mittee of the House of Commons, who made the state of the former judicatures in Bengal a special object of their enquiry, reported in the year 1773, that "so far as they were able to judge, from all the information laid before them, the subjects of the Moghul empire in that province derived little protection or security from any of these courts; and that, in general, though forms of judicature were established, and preserved, the despotic principles of the government rendered them the instruments of power, rather than of justice; not only unavailing to protect the people; but often the means of the most grievous oppressions, under the cloak of the judicial character." The committee further stated it to be "the general sense of all the accounts they had received respecting these courts, that the administration of justice, during the vigor of the ancient constitution, was liable to great abuse and oppression; that the judges generally lay under the influence of interest; and often under that of corruption; and that the interposition of government, from motives of favor or displeasure, was another frequent cause of the perversion of justice." This authoritative statement is corroborated by every well informed writer on the Mahomedan government of Bengal, after it ceased to be directed by the regular control, and vice-royal appointment, of the Emperor; from Scrafton, who, in his first letter,<sup>2</sup> states, "the government of the Moors borders so near on anarchy, you would wonder how it keeps together;" to Governor Verelst, who, in his instructions to the supervisors (appointed in 1770,) observes: "It is difficult to determine whether the original customs, or the degenerate manners, of the Mussulmen, have most contributed to confound the principles of right and wrong in these provinces. Certain it is that almost every decision of theirs is a corrupt bargain with the highest bidders."<sup>3</sup>

Report of a Committee of the House of Commons on the former judicatures in Bengal.

Corroborated by writers on the Mahomedan government of Bengal, after it became independent of imperial control.

<sup>1</sup> Vide sixth report of the committee of secrecy, 1773.

<sup>2</sup> On the government of Hindoostan, published in 1763.

<sup>3</sup> The same favorable comparison may be made, between the system of internal government now established in the provinces ceded by the Newab Vizeer, and that which subsisted before the cession in 1801. This is abundantly shown by an official report, dated the 10th February, 1805, from Mr. Henry Strachey, one of the judges of the court of appeal and circuit for those provinces; who remarks—"It is scarcely possible for an unprejudiced mind to doubt the superiority of our government to the native governments. To do so, is to compare anarchy, oppression, and wretchedness, with justice, moderation, peace, and security." The following paragraph of a letter addressed by the Vice President in Council at Fort William, to the Court of Directors, under date the 29th November, 1814, and accompanying a Report from the Superintendent of Police for the Western Provinces, may be likewise cited, as applicable to both the Conquered and Ceded Provinces. "Turning to the Ceded and Conquered Provinces, although less progress has apparently been made in the suppression of the different crimes and offences mentioned in Mr. Blount's Report, than in the old territories, we nevertheless perceive manifest traces of the influence of a regular system of civil polity on the great body of the people. On the first acquisition of these provinces, one of the most ordinary, and at the same time one of the greatest evils, was the private war in which the proprietors of estates and others, used to engage against each other. Another evil, of a very atrocious character, was the crime of assassination in revenge for wrongs, which the destined victim was supposed to have committed, or of which he might have been really culpable. Both these enormities had their origin in the same source, viz. the weakness of the preceding governments, and the want of regular established tribunals, to afford redress for wrongs committed by one individual against another. Considerable progress has been made in the suppression of both these crimes. Assassinations by the detestable class of criminals denominated *things* are also, we trust, much less frequent than formerly. But we are concerned to add that this crime has not been entirely suppressed in the Doab. With respect to the more ordinary offences of robbery, house-breaking, and theft, if the Report above noticed shows that they still exist in much too great a degree, it also shows that those evils are less prevalent than for-

Plan of the committee of circuit, for the administration of justice, adopted in 1772

Immediately after the receipt of orders from the Honorable Court of Directors, to enter upon the duties of the deewany office, a committee was appointed, consisting of the Governor Mr. Hastings, and four Members of the Council; who, on the 15th August, 1772, proposed a plan for the administration of justice, which, on the 21st of the same month, was adopted by the government. Under this plan, which contains some original provisions yet preserved in our judicial code, mofussil dewanny adawluts, or provincial courts of civil justice, under the superintendence of the collectors of the revenue, were established in each district. "All disputes concerning property, real or personal, all causes of inheritance, marriage, and cast, all claims of debt, disputed accounts, contracts, and demands of rent," were declared cognizable by these courts; excepting the right of succession to zemindaries and talookdaries; the decision of which was reserved to the President and Council. A court of sudder dewanny adawlut, or superior civil court, was at the same time instituted at the presidency, under the superintendence of three or more Members of the Council, to hear appeals from the provincial courts, in causes exceeding five hundred rupees. It was declared that, "as nothing is more conducive to the prosperity of any country, than a free and easy access to justice and redress, the collectors shall at all times be ready to receive the petitions of the injured." The custom of levying *chout*, *dus-sutra*, *punchutra*, or any other fee or commission, on the amount of money recovered, or *etlak* on the decision of causes, as well as all heavy arbitrary fines, "was for ever abolished." And, besides provisions for local investigations regarding disputed lands, boundaries, &c. and for the settlement of accounts, partnerships, and other matters, by arbitration, when the parties might agree thereto; it was provided "that in all suits regarding inheritance, marriage, cast, and other religious usages or institutions, the laws of the Koran with respect to Mahomedans, and those of the Shaster with respect to Gentoos, shall be invariably adhered to. On all such occasions the Moulavies or Brahmins shall respectively attend to expound the law, and they shall sign the report, and assist in passing the decree."

Alteration in the constitution of the civil courts, on the appointment of provincial councils, in 1774. Further alteration, by the establishment of distinct courts, in 1780.

In 1774, an alteration took place in the constitution of the mofussil dewanny adawluts, by the recall of the collectors, and appointment of provincial councils for the divisions of Calcutta, Burdwan, Dacca, Moorshedabad, Dinagapore, and Patna. The administration of civil justice was vested in the Council at large; but exercised by one of the members in rotation. This plan continued in force till the 28th March, 1780, when the Governor General and Council resolved, that, for the more effectual and regular administration of justice, distinct courts of dewanny adawlut should be established in the six divisions above mentioned; to be independent of the provincial councils; and to take cognizance of all claims of inheritance to zemindaries, talookdaries, or other real property; or mercantile disputes; all matters of personal property (with the exceptions subsequently noticed) and all disputes about the limits of landed property within the town of Calcutta; and Punchawungong, or the fifty-five villages surrounding it. But the provincial councils were to try and decide, as heretofore, all causes having relation to the public revenue, as well as all demands of landholders and farmers on their under-renters, or others, for arrears of rent; and all complaints from ryots, and tenants of every description, for irregular or undue exactions of rent or revenue. The provincial councils were further to try and decide all disputes relative to boundaries; except within the town of Calcutta and Punchawungong (which

"merly. The progress of reform may not have kept pace with our wishes; but we are not prepared to say, that it has not been as rapid as, considering the accumulated difficulties of the case, could have been reasonably expected."

were excepted as, from their number and intricacy, being likely to occupy too much of their time) and also all claims for money lent to zemindars, talookdars, and chowdries, for the payment of the revenue. The further provisions for the administration of justice, made at this period, are detailed in a plan recorded on the proceedings of the Governor General and Council, under date the 28th March, 1780; and printed in the Appendix to the First Report from the Select Committee of the House of Commons, appointed in 1781.

The avocations of the Governor General and Council having prevented their sitting in the court of sudder dewanny adawlut, a separate judge (Sir E. Impey) was, on the 18th October, 1780, appointed to the charge and superintendency of that court. And, on the 3d November following, thirteen articles of regulations, prepared by the judge, and approved by the government, were passed for the guidance of the civil courts, superior and inferior; which were afterwards incorporated, with additions and amendments, in a revised code, comprizing ninety-five articles, of "Regulations for the administration of justice in the courts of mofussil dewanny adawlut, and in the sudder dewanny adawlut, passed in Council, the 5th of July, 1781;" the declared objects of which were, "the explaining such rules, orders, and regulations, as may be ambiguous; and revoking such as may be repugnant or obsolete; to the end that one consistent code be framed therefrom; and one general table of fees established in and throughout the said courts of mofussil dewanny adawlut; by which a general conformity may be maintained in the proceedings, practice, and decisions, of the several courts; and that the inhabitants of these countries may not only know to what courts, and on what occasions, they may apply for justice; but, seeing the rules, ordinances, and regulations, to which the judges are by oath bound invariably to adhere, they may have confidence in the said courts; and may be apprized on what occasions it may be advisable to appeal from the courts of mofussil dewanny adawlut to the court of sudder dewanny adawlut; and knowing the utmost of the costs which may be incurred in their suits, may not, from apprehension of being involved in exorbitant and unforeseen expenses, or of being subjected to frauds, or extortion of the officers of the court, be deterred from prosecuting their just claims."

Under these regulations (which were printed with translations, and which constitute a principal foundation of the rules now in force, relative to the administration of civil justice, though including a material deviation from the present system, with respect to the cognizance of rent and revenue causes, as will be more fully stated) all suits concerning the inheritance or succession to zemindaries, talookdaries, or other landed property, or concerning any right, title, or claim of possession thereto, or the bounds and limits thereof, and concerning debts, accounts, contracts, or property of any nature whatsoever, real or personal, (exclusive of demands for arrears of rent, or complaints for exactions of rent, and all causes relative to the public revenue, the cognizance of which was left to the collectors, who had been substituted for the provincial councils) were made cognizable, as heretofore, by distinct courts of mofussil dewanny adawlut; which had been augmented to the number of eighteen, on the 6th April preceding, in consequence of experienced inconvenience from the too extensive jurisdiction of the six before instituted; and the judges of which were unconnected with the revenue department; except in the districts of Chittra, Bhagulpore, Islamabad and Rungpore; where, for local reasons, the offices of judge and collector were vested in the same person; but with a provision that the judicial authority should be considered altogether separate from that of the collector; and that in the former capacity the judge should be wholly independent of the Board of Revenue; subject only to the authority of the Governor General in Council; and of the judge of the sudder dewanny

New constitution of sudder dewanny adawlut, in 1780. Regulations passed on the 3d November, 1780.

Incorporated in a revised code, passed on the 5th July, 1781. Objects of this code.

Jurisdiction of the civil courts, established under these regulations.

Superintendence of the sudder dewanny adawlut reassumed by the Governor General and Council, in 1782.

And this court declared to be a legal court of record by the statute 21 Geo. III. cap. 70.

Change of system in 1787; by uniting the offices of judge and collector in the same person; except in the three cities. Revised code of regulations adapted to this change.

**adawlut.** The superintendence of this court was reassumed by the Governor General and Council, on the 15th November, 1782, in pursuance of instructions from the Honorable Court of Directors; and by the Statute 21 George III. chap. 70. it was declared, that "Whereas the Governor General and Council, or some committee thereof, or appointed thereby, do determine on appeals and references from the country or provincial courts, in civil causes; be it further enacted, that the said court shall and lawfully may hold all such pleas and appeals, in the manner and with such powers as it hitherto hath held the same, and shall be deemed in law a court of record; and the judgments therein given shall be final and conclusive; except upon appeal to His Majesty, in civil suits only, the value of which shall be five thousand pounds and upwards."

In the year 1787, in consequence of further instructions from the Court of Directors, it was resolved that, with an exception to the three courts established in the cities of Moorshedabad, Patna, and Dacca, (which were to continue independent of any collectorship for the decision of causes of a civil nature, originating within the limits of these cities,) the office of judge of the several mofussil courts should be held by the person who had, or should hereafter have, the charge of the revenue. A revised code of judicial regulations, adapted to this change of system, and dated the 27th June, 1787, was at the same time printed and published, with translations, in ninety one articles; the fourteenth of which declared the matters cognizable in the mofussil adawluts to be, all disputes concerning property, real or personal; all causes of inheritance, marriage, or cast; all claims to zemindaries, talookdaries, and other lands; all matters relating to debts, accounts, contracts, partnerships, and duties; and in general all "subjects of litigation, being of a civil nature, and not concerning the revenues." But, by the 19th section, these courts were not to entertain "any suit or cause for any matter or thing directly or indirectly relating to the public revenue; or concerning any demand of government on zemindars, talookdars, chowdries, or other landholders, farmers, muttahids, wadadars, securities, aumils, tussildars, etmamdars, or others, employed in the collections, or, in any wise responsible for the revenues; or any demands of zemindars, talookdars, chowdries, or other landholders, farmers, muttahids, wadadars, securities, aumils, tussildars, etmamdars, or other persons employed in the collections, on their under farmers, malzamins, inferior landholders, and collectors, or others, from whom rents or revenues have been immediately due to them. Nor any demands for rents or revenues on persons employed in the collection of them, officially or hereditarily, in the different gradations downwards, from government to the ryots, or immediate occupants of the soil; nor again, in the same manner, of any complaints of ryots and persons of any of the abovementioned denominations, against the persons to whom they pay revenues in the different gradations upwards, for irregular or undue exactions."

The whole of the causes, thus excepted from the jurisdiction of the courts of dewanny adawlut, were made cognizable by the collectors, under a separate code of revenue regulations, (passed on the 8th June, 1787,) by the first article of which it was provided, "that the several branches of the public duty, now vested in the collector, shall not be blended in the execution; but each part shall be discharged by him in the capacity of collector, judge, or magistrate, according to the department to which it belongs, and be recorded in the proceedings of that department only, distinct from others." It was further provided, that the Board of Revenue should be authorized to receive appeals in matters of revenue, from the decisions of the collectors; if preferred within one month; and an ultimate appeal was allowed from their determination, within the same period, to the Governor General and Council.

Causes relating to the land rents, or public revenue, made cognizable by the collector; under a separate code of regulations; and appeal to the Board of Revenue and Governor General and Council.

The reasons assigned for re-investing the collectors with the superintendence of the courts of mofussil dewanny adawlut, (a system which had been discontinued in 1780, "for the more regular administration of justice in the "country civil courts of these provinces;") were "the greater simplicity, "energy, justice, and economy, expected to be the result of the measure." The following objections, which candour requires to be noticed, had also been stated, against the system established in 1780 and 1781, by one of the most experienced, ablest, and best informed of the Company's servants. "People "accustomed to a despotic authority should look to one master. It is impos- "sible to draw a line between the revenue and judicial departments in such a "manner as to prevent their clashing; and in this case, either the revenues "must suffer, or the administration of justice must be suspended. The pre- "sent regulations define the objects of the two jurisdictions with clearness "and precision; yet they continually clash in practice: complaints are so "blended, that it is often impossible to determine to which tribunal they be- "long; and that there has not been more confusion than has actually hap- "pened, is owing to the discretion of those who have been entrusted with the "administration of justice. It may be possible, in the course of time, to in- "duce the natives to pay their rents with regularity, and without compulsion, "but this is not the case at present. If any force is offered, a complaint is "made in a court of justice, and whether true or false, a temporary protection "is given to the complainant, who is released from the demands upon him: "to realize them afterwards is no easy matter. In all demands for revenues, "or in summonses to cause the attendance of parties at the adawluts, peons "are employed; and very often the peons of the two tribunals meet at the "house of the same man, where the property of his person is contested, and "he is obliged to pay both parties."

Reasons as-  
signed for re-  
investing the  
collectors with  
the superin-  
tendence of  
the civil  
courts.  
And objec-  
tions stated  
against the  
former system

But, admitting that a system, vesting in the hands of one person the powers of judge and magistrate, and the authority necessarily entrusted to the officers employed in the collection of the public revenue, may be more simple, energetic, and economical, than a system which divides these powers between distinct persons and authorities; it is manifestly too extensive a trust; and if a higher degree of justice be rendered, in any instance, by an administration of the former system, it must proceed from the personal character and qualifications of the individuals employed to administer it. These, for a time, might check the natural tendency of such an accumulation of power to the abuse of it; but could not be relied upon, as a fixed principle, to support any permanent system of justice. Admitting further, what is by no means certain, under proper provisions, that the collector, armed with the powers of judge and magistrate, might experience more facility in enforcing demands of revenue; than if there were an independent court of justice upon the spot, to which the injured could resort when his demands, or those of the native officers acting under him, exceed what is justly due; by what means could redress be obtained against injustice in such demands, where the collector himself presides in the only local tribunal? Complaints indeed might have

Remarks on  
the reasons  
and objections  
above stated.

<sup>1</sup> Sir J. Shore; in his "Remarks on the mode of administering justice to the natives "in Bengal, and on the collection of the revenues," which have been already men- "tioned as printed in the sixth volume of India Papers, 1787. It should be added, as appears from Sir J. Macpherson's minute, recorded with these remarks in the Bengal Revenue Proceeding of 29th May, 1785, that they were written for his personal in- "formation; and were "not meant for the public eye." See further, in page 261 of the second volume of this Analysis, extract of a letter from Sir J. Shore to Marquis Corn- "wallis, dated the 15th March, 1793; in which, referring to the judicial arrangement then proposed to be adopted, he declares his "unqualified assent to the principles on which it is founded."



been preferred, whilst this system prevailed, to the board of revenue, or to the Governor General and Council, at the presidency ; but the distance of most of the districts from Calcutta, with the delay and loss of time that must always ensue, operated to prevent such recourse, except in cases of serious oppression ; and a dread of the various powers united in the collector's person must have been a stronger bar to complaint against him : especially when every estate within his jurisdiction was liable to an annual increase of its assessment, either at his discretion, or upon his information. Add to this the difficulty of ascertaining the truth of any complaint against a collector, when he was the only judicial officer upon the spot ; and it must be obvious that if few cases did occur of actual oppression, or injustice, in the exercise of the high powers formerly vested in the collectors of the public revenue, it must be ascribed to their personal merits ; which, as before observed, might for a time prevent the ill consequences of a defective system ; but could not be urged against the expediency of a more certain and adequate remedy. It might be added, that some cases have occurred to show the necessity of supplying this defect in the former system of revenue and justice. But it is not necessary that an abuse of authority should actually take place to evince the wisdom of guarding against it. Nor was this the only objection to the union of the functions of judge and magistrate with those of the collector. In the latter capacity his measures and conduct were continually open to inspection. The monthly reports made by him, of the state of his collections, drew the constant attention of the board of revenue, and of government, to his success, or failure, in realizing the public dues ; and commendation, or censure, was the frequent result ; whilst, at the same time, his diligence or neglect in the decision of causes, wherein the government had no immediate interest, was seldom brought into public notice ; and when observed, the multiplicity of duties he had to perform might be a real plea of justification for any delay in the administration of justice. Under these circumstances, it was natural and unavoidable, that the collection of the revenue, on which the collector's credit and promotion in the service might depend, should be considered his primary duty ; and that his duties as judge and magistrate should be regarded as subordinate. The latter might be expected to give way, or at least to remain suspended, whenever they interfered with the former ; and, without supposing that any collector was influenced by his commission on the amount of his revenue collections, it may fairly be inferred, that no collector of an extensive district could have given that constant attention to the administration of civil and criminal justice, and police, which the due performance of these important duties indispensably requires.

Further observations on the system of civil justice established in 1787, and applicable to every system antecedent to that of 1793

A third objection to the system of civil justice, subsisting under the regulations of 1787, applies equally to every system established before that of 1793 ; and may be considered to have been a principal cause of the clashing of authorities noticed in the foregoing quotation. The exception of all suits relative to the public revenues, as well as all demands of the landholders, and farmers of land, upon their under-renters and tenants, and all complaints of the latter against the former, " for irregular or undue exactions, or for any " oppressions whatsoever," from the jurisdiction of the courts of dewanny adawlut ; whilst these courts were to have cognizance of all complaints and claims, relative to the property of lands, " or any right, title, claim, demand, " interest, or lien, to or in the same, or to the possession thereof ;" could not fail of rendering it " often impossible to determine to which tribunal " a blended complaint belonged ; and the inconveniences stated to have been experienced were the natural result. The making all complaints of exaction or oppression, in the collection of the revenue and land rents, exclusively cognizable by the collector of the revenue, must also, in frequent instances, have

stopped the course of justice; and, in others, have subjected the collector's judgment, however just, to suspicion of its impartiality, from the known interest he had in realizing the revenue under his charge; and consequently in supporting the landholders and farmers, from whom it was to be received, in the enforcement of their demands upon their under-renters and tenants. The same bias might be suspected in the collector's decision upon cases of exaction, or undue severity, by any native officer employed under him in the public collections; and where there was no other local court, except that of the collector, to grant redress, it may be presumed that the application for it was often repressed by fear or distrust. This reasoning does not apply to the collectors, and their subordinate officers, being employed to adjust disputed accounts of rent between the landholders, farmers, and tenants, subject to appeal from their adjustment to an independent court of justice upon the spot. On the contrary, the greatest convenience to the parties concerned has been found to result from the revenue officers, whose knowledge and situation peculiarly qualify them for such adjustments, being thus usefully employed as referees, under the established courts of justice; but it is forcibly applicable to the collector's authority as formerly subsisting, exclusive in all cases of rent or revenue demand, arrear, or exaction; and without any efficient superior court of revision or control.

To the remark that "people long accustomed to a despotic authority should only look to one master," without questioning its general truth and propriety, may be fairly opposed the following observations of Marquis Cornwallis:—"The proposed arrangements only aim at insuring a general obedience to the regulations, which we may institute; and at the same time impose some check upon ourselves against passing such as may ultimately prove detrimental to our own interests, as well as the prosperity of the country. The natives have been accustomed to despotic rule from time immemorial, and are well acquainted with the miseries of their own tyrannic administrations. When they have experienced the blessings of good government, there can be no doubt to which of the two they will give the preference. We may therefore be assured that the happiness of the people, and the prosperity of the country, is the firmest basis on which we can build our political security. When the landholders find themselves in the possession of profitable estates; the merchants and manufacturers in the enjoyment of a lucrative commerce; and all descriptions of people protected in the free exercise of their religion; both the numerous race of the long oppressed Hindoos, and their oppressors the Mahomedans, will equally deprecate the change of a government under which they have acquired, and under which alone they can hope to enjoy, these inestimable advantages."

Impressed by these considerations; by a sense of the radical defects, above stated, in the constitution of the provincial courts of judicature, which subsisted at the commencement of 1793; and by the many and powerful reasons, moral and political, which called for such an administration of justice, as by securing the private rights of every description of persons, should promote the public advantage, and general prosperity of the country; Marquis Cornwallis determined to vest the collection of revenue, and administration of justice, in separate officers; to abolish the *mál adawlut*, or revenue courts; and to withdraw from the collectors of revenue all judicial powers; transferring the cognizance of all causes hitherto tried by the revenue officers to the courts of *dewanny adawlut*. The preamble to Regulation 2, 1793, contains the reasons publicly assigned for this measure, in the following terms:—"All questions between government and the landholders, respecting the assessment and collection of the public revenue, and disputed claims between

The revenue officers may be usefully employed as referees, under the established courts of justice; to adjust disputed accounts of rent between the landholders and farmers, and their tenants.

Observations of Marquis Cornwallis on the arrangements proposed by him.

Reasons for vesting the collection of revenue administration of justice in separate officers, to abolish the *mál adawlut*, and for withdrawing all judicial powers from the collectors.

"the latter and their ryots, or other persons concerned in the collection of their rents, have hitherto been cognizable in the courts of *mál adawlut*, or revenue courts. The collectors of the revenue preside in these courts as judges; and an appeal lies from their decisions to the board of revenue, and from the decrees of that board to the Governor General in Council in the department of revenue. The proprietors can never consider the privileges which have been conferred upon them as secure, whilst the revenue officers are vested with these judicial powers. Exclusive of the objections arising to these courts from their irregular, summary, and often *ex parte* proceedings, and from the collectors being obliged to suspend the exercise of their judicial functions, whenever they interfere with their financial duties; it is obvious that if the regulations for assessing and collecting the public revenue are infringed, the revenue officers themselves must be the aggressors; and that individuals who have been wronged by them in one capacity, can never hope to obtain redress from them in another. Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants. Other security therefore must be given to landed property, and to the rights attached to it, before the desired improvements in agriculture can be expected to be effected. Government must divest itself of the power of infringing, in its executive capacity, the rights and privileges, which, as exercising the legislative authority, it has conferred on the landholders. The revenue officers must be deprived of their judicial power. All financial claims of the public, when disputed under the regulations, must be subjected to the cognizance of courts of judicature, superintended by judges, who, from their official situations, and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land, and also between the latter and their tenants. The collectors of the revenue must not only be divested of the power of deciding upon their own acts, but rendered amenable for them to the courts of judicature; and collect the public dues, subject to a personal prosecution for every exaction, exceeding the amount which they are authorized to demand on behalf of the public; and for every deviation from the regulations prescribed for the collection of it. No power will then exist in the country, by which the rights vested in the landholders by the regulations can be infringed; or the value of landed property affected. Land must in consequence become the most desirable of all property; and the industry of the people will be directed to those improvements in agriculture, which are as essential to their own welfare, as to the prosperity of the state." It was accordingly enacted by Section 2 of the regulation above cited, that from the 1st May, 1793, the courts of *mál adawlut*, or revenue courts, shall be abolished; and the trial of the suits which were cognizable in those courts, as well as all judicial powers whatsoever heretofore vested in the collectors of the revenue, or in the board of revenue collectively, as a court of appeal, or in any member of that board individually, shall be transferred to the courts of *dewanny adawlut*."

Section 2, Regulation 2, 1793, abolishing courts of *mál adawlut* and judicial powers of the revenue officers.

Governor General's remark on the powers requisite to enforce the collection of the public revenue; and the necessity of courts of justice to prevent an abuse of such powers.

The powers with which the revenue officers were at the same time invested, for the punctual collection of the public dues, will be noticed in a subsequent part of this Analysis. It is sufficient to quote in this place the following remark from the Governor General's public minute on the occasion. "There is no class of men which government should watch with greater jealousy, and over whom the regulations should have a stricter control, than the officers who are entrusted with the collection of the public revenue. It is necessary to arm them with powers to enforce their demands in the first instance; otherwise individuals, under the pretext of disputing the justness

"of it, might protract the payment of what is due from them; and render the collection of the public revenue either impracticable, or an endless source of trouble and litigation. But to prevent the abuse of this power, there should be courts of justice ready to punish oppression and exaction; and the people must be satisfied that the remedy will be certain and effectual; and that it can be expeditiously obtained." The wisdom of this principle is confirmed by the sentiments of a celebrated writer on justice and polity, already referred to,<sup>1</sup> who observes, that "the establishment of courts of justice is particularly necessary to decide causes relating to the revenue; that is, all disputes that may arise between those who are employed in behalf of the prince and the subjects;" and adds that, "in all well-regulated states, in countries that are really states, and not the dominions of a despotic prince, the ordinary tribunals decide the causes in which the sovereign is concerned, with as much freedom as those between private persons." In pursuance of this just practice, and to render the judicial authority, in this portion of the British state, effectual, in all cases, for the protection of private rights; or to use the terms of the preamble to Regulation 3, 1793, "to ensure to the people of this country, as far as is practicable, the uninterrupted enjoyment of the inestimable benefit of good laws duly administered," government determined "to divest itself of the power of interfering in the administration of the laws and regulations in the first instance; reserving only, as a court of appeal or review, the decision of certain cases in the last resort; and to lodge its judicial authority in courts of justice; the judges of which should not only be bound by the most solemn oaths to dispense the laws and regulations impartially; but be so circumstanced as to have no plea for not discharging their high and important trust with diligence and uprightness." It was resolved, "that the authority of the laws and regulations, so lodged in the courts, shall extend, not only to all suits between native individuals, but that the officers of government, employed in the collection of the revenue, the provision of the Company's investment, and all other financial concerns of the public, shall be amenable to the courts, for acts done in their official capacity, in opposition to the regulations;" and that government itself, in superintending these various branches of the resources of the state, might be precluded from injuring private property, it was further determined "to submit the claims and interests of the public, in such matters, to be decided by the courts of justice, according to the regulations, in the same manner as suits between individuals."

It was accordingly declared by Section 10, Regulation 3, 1793, (extended to Benares by Section 7, Regulation 7, 1795, and re-enacted for the ceded provinces by Section 7, Regulation 2, 1803,) that "collectors of the revenue and their assistants and native officers, commercial residents and agents, and their assistants and native officers employed in the provision of the investment, salt agents, and their assistants and native officers, concerned in the manufacture of salt, the collectors of the customs, and their assistants and native officers, employed in the collection of the customs, the mint and assay masters, and their assistants and native officers, are amenable to the zillah or city court, in the jurisdiction of which they may reside, or carry on the public business committed to their charge, for any acts done in their official capacity, in opposition to any regulation printed and published in the manner directed in Regulation 41, 1793." It was further prescribed by Section 11, Regulation 3, 1793, (extended to Benares by Section 7, Regulation 7, 1795, and re-enacted for the ceded provinces by Section 15, Regulation 2, 1803,) that "if a native, or any other person not being a Bri-

Confirmed by the sentiments of a celebrated writer on justice and polity.

Consequent determinations of Government, as stated in the preamble to Regulation 3, 1793.

Section 10, Regulation 3, 1793, declaring certain public officers, European and natives, amenable to the civil courts, for acts done in their official capacities, in opposition to the regulations. Extended to Benares by Sec. 7, Reg. 7, 1795; and re-enacted for ceded provinces, by Sec. 7, Reg. 2, 1803.

<sup>1</sup> Vattel, book i, chapter 13.

Further provision by Section 11, Regulation 3, 1793, for a redress of grievances, under the regulations, by acts done in pursuance of special orders from the Governor General in Council, or from the boards of revenue and trade; extended to Benares by Sec. 7, Reg. 7, 1795; and re-enacted for ceded provinces by Sec. 15, Reg. 2, 1803.

Courts established for administering civil justice.

"tish subject, shall consider himself aggrieved, under any regulation printed and published in the manner directed in Regulation 41, 1793, by an act done by any of the officers of government described in Section 10, pursuant to a special order originating with the Governor General in Council, or the board of revenue, or of trade, the officer by whom the act may be done, is not liable to be sued for it. In such cases, government is to be considered as the defendant; and the person deeming himself aggrieved is to present a petition to the judge of the dewanny adawlut of the zillah, or city, to which the officer, by whom the act complained of may have been done, shall be amenable in his public capacity; stating wherein he considers himself injured under the regulations; and praying that the Governor General in Council will order the court of dewanny adawlut, in which the cause may be cognizable, to try the points or matters contested, agreeably to the regulations. The judge, to whom the petition may be presented, is to forward it immediately to the Governor General in Council; who, provided he shall not think it proper to afford the redress that may be solicited by the petitioner, and the courts of justice shall be competent to try the cause, will direct the court, in which it may be cognizable, to proceed to the trial of it. If the Governor General in Council shall order the cause to be tried, the court is immediately to send a written notification of the order to the complainant; and the cause is to be considered as filed in the court from the date of the notification. The court is then to proceed to try the suit, under the same rules and regulations as are prescribed for the trial of suits between individuals."

Previous to a specification of these rules, it will be proper to state what courts have been established for the administration of civil justice; and in the relative order of superior jurisdiction, they might be exhibited in the following summary description. 1. The court of sudder dewanny adawlut, or principal court of civil judicature, at the presidency. 2. Six provincial courts; viz. four in the lower provinces of Bengal, Behar, and Orissa; and two in the upper provinces, including Benares. 3. The zillah and city dewanny adawluts, or civil courts. 4. Courts of the registers. 5. The courts of native commissioners. It will, however, be more conducive to perspicuity, in stating the powers and duties of the several courts, to retain the order observed in the first edition of this Analysis, viz. 1. Zillah and city civil courts; with the subordinate courts of registers, and native commissioners. 2. Provincial courts. 3. Court of sudder dewanny adawlut.

### *Zillah and City Civil Courts.*

R. 3, 1793. § 2. Zillah and city courts in the lower provinces.

R. 7, 1795. § 2. In the province of Benares.

R. 2, 1803. § 2. R. 9, 1804. § 3. and 4.

By Regulation 3, 1793, twenty-three zillah, and three city, dewanny adawluts, or courts of civil judicature, were established in the several districts of Bengal, Behar, and Orissa; and in the cities of Dacca, Moorshedabad and Patna. Of this number, two zillah courts, viz. that of zillah Moorshehabad, transferred to zillah Beerbhoom and the city of Moorshedabad, and that of Cooch Behar, annexed to zillah Rungpore, have been discontinued; but five additional courts have been instituted for the zillahs of Hooghly, Backergunge, Cuttack, the Jungle Mehals, and the suburbs of Calcutta; making the present number of zillah and city courts, in the lower provinces, twenty-nine. By Regulation 7, 1795, one city, and three zillah courts were established for the province of Benares; of which the Ghazepore zillah court was afterwards abolished, and its jurisdiction divided between the other three courts. By Regulation 2, 1803, seven zillah courts were established in the provinces ceded by the Newab Vizeer. And by Regulation 9, 1804,

the territories ceded by the Peshwa, and Doulut Rao Sendheeah, were divided into six zillahs. Of these zillah Paniput, comprising the city of Delhi, and the adjacent territory assigned for the support of the late King Shah Aalum, and his descendants, was discontinued by Section 4, Reg. 8, 1805; and "declared not to be subject to any of the laws or regulations of the British Government, printed and published in the manner prescribed in Reg. 1, 1803." But a subdivision of the ceded territory in Bundelcund into two jurisdictions has restored the original number of thirteen zillah courts for the ceded and conquered provinces. The entire number of those courts, now established under the presidency of Fort William, is therefore forty-five. These courts are all superintended by an European judge; assisted by a Mahomedan and a Hindoo law officer; by a register, who, as well as the judge, is a covenanted servant of the Company; in some instances by an assistant to the register, being also a covenanted servant; and by an establishment of native ministerial officers. It is provided by Section 5, Regulation 24, 1814, that "no person shall be hereafter deemed qualified to be appointed to the situation of judge and magistrate of any zillah or city court, unless he shall have previously officiated as assistant judge, or register, or as joint or assistant magistrate, for a period not being less than three years; or unless he shall have been employed in other situations in the judicial department, or in any offices imposing the discharge of judicial functions, either of a criminal or civil nature, for a total period, not being less than three years." Previously to entering upon the execution of the duties of his office, the judge is required to take and subscribe before the Governor General in Council, or any person whom he may commission to administer it, an oath, the substance of which has been already stated in the preceding section. The courts "are to be held in a large and convenient room, in the city or place at which they are respectively established, three days in every week; or oftener, if the state of the business shall render it necessary;" and "no rule, order, proceeding or decree is to be made, but on court days, and in open court." It is further directed that "the zillah and city courts are to use a circular seal one inch and three quarters in diameter, with an inscription in the Persian and Bengal (or Hindostanee) languages;" and that "the seal of each court is to remain in the custody of the judge."

1 The following is the prescribed form of oath—

"I A. B. appointed judge of the dewanny adawlut of the zillah (or city) of \_\_\_\_\_ solemnly swear, that I will administer justice conformably to the regulations that have been or may be passed by the Governor General in Council, to the best of my ability, knowledge, and judgment, without fear, favor, promise, or hope of reward; that I will not receive directly or indirectly any present or Nuzzer, in money or effects of any kind, from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided, in the court of which I am appointed judge; that I will not knowingly permit any person or persons under my authority, or in my immediate service, to receive directly or indirectly any present or Nuzzer, in money or effects, from any party or person whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the court; that I will render a true and faithful account of all sums of money that may be paid into the court or disbursed from it; that I will not be concerned directly or indirectly in the purchase of any goods or commodities in the British dominions in Bengal for the purpose of remitting money to Europe, nor in any commercial transactions; and that I will not derive directly or indirectly any emolument or advantages from my station excepting such as the orders of Government do or may authorize me to receive. SO HELP ME GOD."

2 When the judge from indisposition or other cause, is prevented holding a court three days in each week, as required, he is to report the cause to the sudder dewanny adawlut, except during an authorized adjournment of the civil court.

In the ceded and conquered provinces.

Constitution of the whole of these courts. Oath prescribed for zillah and city judges, by R. 1793, § 3. Extended to Benares, by R. 7, 1795, § 1 and re-enacted for upper provinces in R. 2, 1803, § 13. R. 24, 1814, § 5. Discharge of judicial functions, for a period not less than three years, required to qualify for the appointment of a zillah or city judge, or magistrate. Rule for holding courts in R. 3, 1793, § 5. extended to Benares by R. 7, 1795, § 5. and re-enacted for upper provinces in R. 2, 1803, § 14. Court seal directed in R. 3, 1793, § 6. extended to Benares by R. 7, 1795, § 6, and re-enacted for upper provinces in R. 2, 1803, § 14.

Their local jurisdiction.  
R. 3, 1793. § 4.  
R. 7, 1795. § 4.  
R. 2, 1803. § 3.

What persons amenable to them.

R. 3, 1793. § 7 and 9. R. 28, 1793, § 2, to 8. extended to Benares by § 7, R. 7, 1795. and by § 2, R. 24, 1795. Re-enacted for upper provinces by R. 2, 1803. § 4. and 6; and by R. 18, 1803, § 2 to 8.

R. 28, 1793. § 7. R. 11, 1797. § 2. R. 18, 1803. § 7. Bond to be executed by persons not amenable to zillah and city courts, who may sue persons amenable thereto.

The local jurisdiction of the several zillah and city courts extends to all places that are, or may be included, within the limits of the zillahs and cities in which they are respectively established. But in some districts particular tenures are specially excepted. Thus in zillah Cuttack, the estates of certain hill or jungle Rajahs, to which the general regulations have not been yet extended, are excepted from the jurisdiction of the civil and criminal courts of that district by Section 13, Regulation 13, and Section 11, Regulation 14, 1805. The territories and jageers in the actual possession of several chieftains and jageerdars, specified in Section 2, Regulation 22, 1812, are also, by that Section, "exempted from the operation of the general regulations, and from "the jurisdiction of the courts of civil and criminal judicature," in zillah Bundelcund. A tract of land in the same district granted as an independent jageer to Amrut Rao is, in like manner, exempted by Section 2, Regulation 7, 1816. All natives, as well as Europeans and other persons not British subjects, residing out of Calcutta, are amenable to the jurisdiction of the zillah and city courts; which are further declared to have jurisdiction over all British subjects, excepting King's officers, serving under the presidency of Fort William, and the military officers and covenanted civil servants of the Company, so far as not to allow them to reside within their respective jurisdictions, at a greater distance than ten miles from Calcutta, unless they execute a bond, the form of which is prescribed in Regulation 28, 1793; (extended to Benares by Regulation 24, 1795, and re-enacted for the ceded provinces by Regulation 18, 1803;) to render themselves amenable to the court within whose jurisdiction they may reside, in all suits of a civil nature that may be instituted against them by natives, or other persons not British subjects, in which the amount claimed may not exceed five hundred sicca rupees. It is provided by the same regulations, that when any British subject, or other person not amenable to the jurisdiction of the zillah and city courts, shall institute a suit against a person amenable thereto, he (the plaintiff) is to execute an instrument, of the nature of an arbitration bond, (the amended form of which is contained in Section 2, Regulation 11, 1797,) declaring himself subject to the jurisdiction of the court, for so much as shall relate to the suit in question; and binding himself to abide by the award or decree of the court; in the same manner and to the same extent, as the jurisdiction of the court is valid against the defendant. If the plaintiff refuse to execute such instrument, his plaint is not to be received or filed.<sup>1</sup>

<sup>1</sup> Since the regulations adverted to were passed, the following provisions relative to British subjects have been enacted in the Statute 53 Geo. III. Cap. 155.—

CV. "And whereas His Majesty's British subjects resident in the British territories in India, without the towns of Calcutta, Madras, and the town and island of Bombay, are now, by law, subject only to the jurisdiction of His Majesty's courts at Calcutta, Madras, and Bombay, respectively, and are exempted from the jurisdiction of the courts established by the said United Company within the said territories, to which all other persons, whether natives or others, inhabitants in the said territories, without the limits of the towns aforesaid, are amenable: and whereas it is expedient to provide more effectual redress for the native inhabitants of the said territories, as well in the case of assault, forcible entry, or other injury, accompanied with force, which may be committed by British subjects at a distance from the places where His Majesty's courts are established, as in case of civil controversies with such British subjects; be it therefore enacted, That it shall and may be lawful for any native of India, resident in the East Indies, or parts aforesaid, and without the said towns, in case of any assault, forcible entry, or other injury, accompanied with force, alleged to have been done against his person or property by a British subject, to complain of such assault, forcible entry, or other injury accompanied with force, (not being felony) to the magistrate of the zillah or district, where the alleged offender shall be resident, or in which such offence shall have been committed; and that such magistrate shall have power and

As the Cosseas, and other mountaineers on the frontier of Sylhet, from whom chunam, and various articles of trade are purchased, could not, from

Special provision respecting British

authority, at the instance of the person so complaining, to take cognizance of such complaint, to hear parties, to examine witnesses, and, having taken in writing the substance of the complaint, defence, and evidence, to acquit or convict the person accused; and in case of conviction, to inflict upon such person a suitable punishment by fine, not exceeding five hundred rupees, to be levied in case of non-payment by warrant under the hand of the said magistrate, and upon any property of the party so convicted, which may be found within the said district; and if no such property shall be found within the said district, then it shall be lawful for the said magistrate, by warrant also under his hand, to commit such offender to some place of confinement within the said zillah or district, which in the judgment of the said magistrate shall be fit for receiving such offender; or if there shall be no fit place of confinement, then to the gaol of the presidency, to remain there for a period not exceeding two months, unless such fine shall be sooner paid; and it shall be lawful for the said magistrate to award the whole or any portion of such fine to the party aggrieved, by way of satisfaction for such injury: Provided always, That in all cases of conviction of a British subject, under the provision herein-before contained, the magistrate before whom such conviction shall take place, shall forthwith transmit copies of such conviction, and of all depositions and other proceedings relative thereto, to the government to which the place wherein the offence was committed is or shall be subordinate: Provided also, that all such fines shall be paid, in the first instance, to the magistrate before whom the party offending shall be convicted, and the amount thereof, after making such satisfaction to the party aggrieved, as aforesaid, if any, shall be transmitted by such magistrate to the clerk of the crown, or other officer to whom it belongs to receive fines in His Majesty's court of oyer and terminer and gaol delivery for the province within which the offence shall have been committed; and such fines shall and may be disposed of in the same manner as other fines imposed by such court of oyer and terminer and gaol delivery: Provided also, that all such convictions shall and may be removable by writ of *certiorari* into the said courts of oyer and terminer and gaol delivery respectively, in the same manner and upon the same terms and conditions, and shall be proceeded upon in the same manner, in every respect, as is directed in the said act of the thirty-third year of His Majesty's reign, with regard to other convictions before justices of peace in the British settlements or territories in India: Provided also, that nothing herein contained shall extend, or be construed to extend, to prevent such magistrate from committing or holding to bail any British subject, charged with any such offence before him, in the same manner as such British subject might have been committed or holden to bail if this act had not been passed, where the offence charged shall appear to such magistrate, to be of so aggravated a nature as to be a fit subject for prosecution in any of His Majesty's courts to which such British subject may be amenable."

CVI. "And be it further enacted, That in all cases of debt, not exceeding the sum of fifty rupees, alleged to be due from any British subject to any native of India resident in the East Indies or parts aforesaid, and without the jurisdiction of the several courts of request established at Calcutta, Madras, and Bombay, respectively, it shall and may be lawful for the magistrate of the zillah or district where such British subject shall be resident, or in which such debt shall have been contracted, to take cognizance of all such debts, and to examine witnesses upon oath, and in a summary way to decide between the parties, which decision shall be final and conclusive to all intents and purposes; and in all cases where any such debt shall be found to be due from any British subject to any such native of India, the amount thereof shall and may be levied in the same manner, and subject to the same regulations and provisions, in respect to the commitment of the debtor, as are herein-before made and provided in respect to the levying of fines in case of the conviction of a British subject before such magistrate."

CVII. "And be it further enacted, That all British subjects of His Majesty, as well the servants of the said United Company as others, who shall reside, or shall carry on trade or other business, or shall be in the occupation or possession of any immoveable property in any part of the British territories in India, at the distance of more than ten miles from the several presidencies of Fort William, Fort Saint George, and Bombay, respectively, shall be subject to the jurisdiction of all courts which now have, or hereafter may have cognizance of civil suits, or matters of revenue, either originally or by



subjects residing within the district of Sylhet.

their situation, prosecute claims upon British subjects for sums exceeding five hundred rupees, in the supreme court, at Calcutta, it is further enacted by

way of appeal, within the districts or places where such British subjects shall so reside, or carry on trade or business, or possess or occupy immoveable property, in all actions and proceedings of a civil nature, and in all matters of revenue (except as hereinafter excepted,) in the like manner as natives of India, and other persons not British subjects, are now liable to the jurisdiction of such courts by and under the regulations of the several Governments of Fort William, Fort Saint George, and Bombay, respectively: Provided always, that no British subject shall be liable to be sued in any such court in respect of residence, unless he shall have his residence within the jurisdiction thereof at the time of commencing the action or proceeding against him; or that the cause of suit shall have arisen within the jurisdiction of the said court, and the suit shall be commenced within two years after the cause thereof shall have arisen, and also within six months after the defendant shall have ceased to reside within such jurisdiction; nor shall any British subject be liable to be sued in any such court in respect of his carrying on trade or business within the jurisdiction thereof, unless the cause of suit shall have arisen within such jurisdiction, and shall relate to the trade or business so carried on, nor to be sued in respect of any immoveable property possessed or occupied by him, unless such property shall be situated within the jurisdiction of the court in which he shall be so sued, and such suit shall be brought to recover the possession or occupation of such property, or for rent, or other demand arising out of the possession or occupation of such property by such British subject: Provided also, that where, by the laws or regulations in force, or hereafter to be in force, within the provinces respectively subject to the Governments of Fort William, Fort Saint George, and Bombay aforesaid, it would be competent to a party to any final judgment or decree of any subordinate civil, or revenue court of judicature, to appeal therefrom to the sudder dewanny adawlut, or other court however denominated, exercising within those provinces respectively the highest appellate jurisdiction in civil suits, it shall be competent to British subjects of His Majesty, in suits commenced against them under the provisions of this act, instead of appealing to the said sudder dewanny adawlut, or other court so exercising the highest appellate jurisdiction as aforesaid, to appeal to the supreme court of judicature at Fort William, or Fort Saint George, or the recorder's court at Bombay, according as the suit may have been commenced in the provinces subordinate to either of the said presidencies; and such court shall have the same powers, as to suspending or allowing execution of the judgment or decree appealed against, and as to taking security for costs, or for the performance of the decree or judgment of the said subordinate courts, as the said sudder dewanny adawlut or other such court as aforesaid would have had, and shall also make rules of practice for the conduct of the said appeals, in all other respects, conforming in substance and effect as nearly as possible to the course of procedure of the said sudder dewanny adawlut, or other such court as aforesaid in cases of appeal: Provided also, that nothing herein contained shall extend, or be construed to extend to take away the jurisdiction of the said supreme courts of judicature at Fort William and Madras, or the said recorder's court at Bombay, respectively; but that all persons having cause of action against any British subject may, at their election, instead of suing in such provincial courts as herein-before provided, commence and prosecute their said suits in the said supreme courts of judicature, and the said recorder's court respectively, in the same manner as before the passing of this act: Provided also, that nothing herein contained, shall extend, or be construed to extend, to authorize the holding or occupying of any land or other immoveable property, beyond the limits of the said several presidencies, by any British subject of His Majesty, otherwise than under and according to the permission of the governments of the said presidencies."

CVIII. "And be it further enacted, that every British subject of His Majesty, not in the service of His said Majesty, or of the said United Company, who, after the tenth day of April, one thousand eight hundred and fourteen, shall go to and reside in any part of the British territories in India, distant more than ten miles from the presidency to which the same shall be subordinate, with the permission of the government of such presidency, or who shall, after the said day, change his residence from one part thereof to another, distant as aforesaid, with such permission, shall procure from the chief secretary of the said government, or other officer authorized for that purpose, a certificate signed by the said chief secretary or other officer, expressing that such British subject has the permission of such government to reside at such place, specifying the same,

Section 7, Regulation 1, 1799, that "such British born subjects as may be permitted to reside within the district of Sylhet, (with the exception of King's officers, and civil and military servants of the Company) shall, in addition to the form of bond prescribed by Section 3, of Regulation 28, 1793, execute a bond of similar tenor, but without the limitation of five hundred rupees, rendering themselves amenable to the jurisdiction of the zillah dewanny adawlut, in all suits for whatever amount or value, that may be instituted against them by any of the inhabitants of the hills on, or contiguous to, the Company's frontier in Sylhet."

R. 1, 1799. 7

Exceptions to the general rule declaring natives amenable to the civil courts. Reg. 2, 1803, § 8. Newab of Furrukhabad.

Nazim of Bengal.

Reg. 10, 1793, § 10.

The only exception, expressly provided by the regulations, to the general rule, declaring natives amenable to the civil courts of justice, is contained in Section 8, of Regulation 2, 1803; whereby it is enacted, in conformity with the sixth article of a treaty concluded with the Newab of Furrukhabad, on the 4th of June, 1802, that "the authority of the court of adawlut shall not extend to the person of the Newab; but as his connections and dependants are undefined, and as it is the object of the British Government to introduce a fair and impartial administration of justice, throughout the province of Furrukhabad; it is agreed, that whatever complaint may be preferred against any of the Newab's dependants, shall, in the first instance, be referred to the Newab; and in the event of the complainant not receiving speedy justice, or being dissatisfied with the Newab's decision, the complaint shall be decided in the adawlut." It is however understood, that the Nazim of Bengal is also, by his station, personally exempted from the common process of the civil courts; and the following provision has been made in Section 10, of Regulation 16, 1793, for the reference of certain cases to him in the first instance: "In complaints brought before any zillah or city court, in which it shall appear, either by the application of the Nazim, or the representation of the defendant, at or before the time of giving in his or her answer, or by the petition of the complainant, that both parties are servants or relations of His Excellency, or the widows or female descendants of the former Nazims of Bengal, the parties are to be referred for justice to the Nazim, or to any person whom he may appoint to dispense it. Upon a complaint being preferred against any servant or servants of His Excellency, by persons of a different description, the court in

and expressing also whether such permission has been granted during the pleasure of such government, or for any limited time; and the said certificate shall be deposited by such British subject in the civil court of the district in which he shall so go to reside, within one month after his taking up his residence there, and shall be kept among the records of the said court, of which certificate so deposited, a true copy, attested by the judge or other officer of such court, thereto authorized, shall be given to the party depositing the same, and shall be deemed and taken in all courts of justice, and on all occasions whatsoever, to be good and sufficient evidence of such certificate, unless the contrary shall be shown: and no British subject not in the service of His Majesty, or of the said United Company, going to reside in any such part of the British territories, or changing his residence from one part thereof to another, after the said day, shall be allowed, while he so resides, to have or maintain any civil action or proceeding (other than in the nature of an appeal) against any person whomsoever in any court of civil jurisdiction within the British territories in India, until he shall have filed, in the court in which such action or proceeding is commenced, a copy of such certificate signed by the judge of the court wherein the same is deposited; or an affidavit accounting, to the satisfaction of the court, for not filing the same; and if it shall be proved to the court in which such action is brought, that such British subject is residing at any place within the said territories, distant more than ten miles from the presidency to which it is subordinate, without such certificate or otherwise than according to the permission contained in such certificate, or that such permission has been revoked, or that, being for a limited time, it has expired and has not been renewed, and that such British subject is therefore residing without permission at more than ten miles distance from such presidency, such British subject shall thereupon be nonsuited."

which the complaint may be instituted, is either to refer it to His Excellency, or to hear it in the ordinary manner, according to its discretion; *taking care at all times, and in all matters, to pay every proper attention to the dignity and long established rights of the Newab.* Provided however, that in all cases in which either the plaintiff or defendant shall prefer the jurisdiction of the courts, to that of the Nazim, the judge is to try and determine the suit, in the same manner as if neither of the parties had been persons of the description specified in this section."

Reg. 15, 1795,  
§ 3.  
Certain suits  
to be referred  
to the Rajah  
of Benares,

A further provision has been made by Section 3, of Regulation 15, 1795, for excepting from judicial cognizance, and referring to the Rajah of Benares, subject to the control of the collector of that province, and ultimately to the decision of the Governor General in Council, complaints relative to undue exactions of revenue, breach of agreement in respect to *pottahs* (leases), or the resumption of lands exempted from the payment of revenue, in the *jageer*, *ultumgha*, and other private lands appertaining to the Rajah, as specified in the section above noticed. But this exception, made in pursuance of an agreement concluded by the Resident at Benares with Rajah Maheepnarain, under date the 27th October, 1794, does not extend to any other complaints or suits preferred against the Rajah of Benares; although, in common with the principal *Mehájuns*, or bankers, of the city of Benares, known under the denomination of *Nouputty*, and the *Babqos*, or persons of the Rajah's blood and family, he was exempted by Section 10, of Regulation 8, 1795, from furnishing the personal security, required from other defendants in civil causes, during the trial of them in the first instance; and the court, receiving a claim upon such privileged defendants, is directed to issue, instead of the usual summons, merely a notice to them; containing a short account of the demand, and fixing a day for them to appear and answer the same, either in person, or by an authorized representative.

who, in com-  
mon with the  
Babqos of his  
family, and  
the principal  
bankers at  
Benares, was  
exempted by  
Sec. 10, Reg. 8,  
1795, from giv-  
ing personal  
security, when  
sued in the  
civil courts.

Provisions of  
Reg. 4, 1812,  
relative to  
suits in which  
native princes  
may be plain-  
tiffs or de-  
fendants.

It may be proper to introduce in this place the provisions of Regulation 4, 1812, entitled "A regulation to enable the Governor General in Council to institute or defend, through the medium of the public officers of Government, actions, in which native Princes, whom it would be improper to require to appear as plaintiffs or defendants in the courts of judicature, may be parties."

The grounds of this regulation are stated in the following preamble:—

Preamble,  
stating  
grounds of this  
regulation.

"Whereas with the view of preserving inviolate the rights of individuals, the British Government has rendered itself amenable to the courts established for the administration of justice in civil cases, throughout the provinces of Bengal, Behar, Orissa, and Benares, and in the ceded and conquered provinces; and whereas, in the same spirit of equity, the Government has precluded itself from deciding by its own authority on disputed claims to property of every description, in which it may be a party with any of its subjects, except in cases expressly reserved to its decision, or to that of the subordinate executive authorities, by the existing regulations; and whereas the sovereigns of adjacent states have occasionally claims to prefer, or rights to defend, as individuals in the territories of the British Government; and difficulties having occurred in prosecuting or defending such claims, from the reluctance felt by those Princes to appear as plaintiffs or defendants in the courts of judicature; the following rules have been passed; to be in force from the period of their promulgation throughout the territories immediately dependent on the presidency of Fort William."

<sup>1</sup> This mode of proceeding in the first instance, viz. by notice, instead of summons, has since been extended to all defendants in civil suits, by Section 2, Reg. 2, 1806; as more fully stated in the sequel.

§ 2. "First. In cases, in which sovereign native Princes, whether residing within the British territories or otherwise, shall have claims to prefer as individuals, to lands or other things, the cognizance of which is vested by the general constitution of the country in the courts of civil judicature, it shall be competent to the Governor General in Council, to order a suit to be instituted, through the medium of the public officers, for the recovery of the lands or other things which may be so claimed, in the court, which, on the principles of the general regulations, is authorized to enquire into, and decide upon, the right to the disputed property." "Second. In like manner, should a suit be instituted in any of the established courts of civil judicature, by any zemindar or other person, for the recovery of lands or other things, in the occupancy of any native Prince, whom it would be improper to require to defend the action himself, it shall be competent to the Governor General in Council to order such suit to be defended by the public officers."

§ 3. "Suits which may be instituted or defended under the preceding section, shall be conducted by the collectors of the land revenue, aided by the vakeels of Government at the city, zillah, and provincial courts, and at the sudder dewanny adawlut, under the directions of the board of revenue in the provinces of Bengal, Behar, and Orissa; and of the board of commissioners in the ceded and conquered provinces, and in the province of Benares; which boards will of course, on all such occasions, be furnished by the Governor General in Council with such information and instructions as may appear necessary to enable them duly to superintend the conduct of the prosecution or of the defence." § 4. "In all original suits and appeals, in which Government may be a party under the provisions of the present regulation, the court which may pass judgment, shall, in addition to the copies of the decrees required to be delivered to the parties, transmit a summary of the decree with as little delay as possible, in the English language, to the secretary to Government in the judicial department, for the information of the Governor General in Council, who, on receipt of such summary, will issue any orders to the board of revenue, or board of commissioners, which the case may appear to require; or will cause the necessary notification to be made to the person on whose behalf the cause shall have been prosecuted or defended, of the final judgment given on the action."

The zillah and city courts respectively are empowered to take cognizance "of all suits and complaints, respecting the succession or right, to real or personal property, land-rents, revenues, debts, accounts, contracts, partnerships, marriage; cast, claims to damages for injuries, and generally of all suits and complaints of a civil nature," in which the defendant may be amenable to their jurisdiction; "provided the value or amount of the claim shall not exceed ten thousand sicca rupees;" and "provided the landed or other real

Sec. 2.  
How claims of sovereign native princes on individuals may be prosecuted and decided upon.

The Governor General in Council may order the public officers to defend suits brought by individuals against such sovereign native princes.

Sec. 3.  
By whom suits so instituted or defended shall be conducted.

Sec. 4.  
A summary of the decree passed in any case of that nature where-in Government may be a party, shall be transmitted immediately to the secretary in the judicial department, for the orders of Government.

What suits are cognizable by the zillah and city courts.  
R. 3. 1793, s. 8, extended to Benares by § 7. R. 7. 1795. Re-enacted for ceded provinces by R. 2. 1803, § 5.

<sup>1</sup> A limitation of the jurisdiction of the zillah and city courts of dewanny adawlut to claims, not exceeding in amount or value five thousand sicca rupees, was established by Regulation 13, 1808, "for rendering civil causes which are appealable to the court of sudder dewanny adawlut cognizable in the first instance by the provincial courts;" and the reasons for this alteration are stated in the preamble to that regulation in the following terms:—"Under the rules in force, all causes of a civil nature, which may not be specially referred by the Governor General in Council, or by the sudder dewanny adawlut, for trial in the first instance by the provincial courts, are instituted in the zillah or city courts; excepting suits for personal property not exceeding fifty rupees, which may be received by the native commissioners vested with the authority of munsiffs. In all cases tried by the zillah and city judges in the first instance, an appeal from their decisions lies to the provincial courts; and if the cause of action exceed five thousand

Reg. 24, 1814,  
§ 6.

Exception,  
with respect to  
the town of  
Calcutta.

R. 3, 1793,  
§ 17, and R. 2,  
1803, § 12.

property to which the suit or complaint may relate, shall be situated, or in all other cases, the cause of action shall have arisen, or the defendant, at the time when the suit may be commenced, shall reside as a fixed inhabitant, within the limits of the zillah, or city, over which their jurisdiction may extend." The town of Calcutta, which is under the immediate jurisdiction of his Majesty's supreme court of judicature, not being comprised in that of any zillah or city court, the above powers do not include the cognizance of any suits for land, or other real property, situated within the limits of Calcutta; nor any personal actions, against the fixed inhabitants of that town, which may not be for arrears of revenue, or may be legally considered exclusively

sicca rupees, a further appeal is open to the court of sudder dewanny adawlut. In consequence of the second appeal allowed, in the cases last mentioned, considerable delay frequently occurs in the final determination upon contested claims to large estates, and other valuable property. Much injury to the rightful owners is often occasioned by such delays; and the expense to all parties is increased, without any adequate benefit. The person against whom the judgment is given, whether by a zillah, city, or provincial court, is seldom willing to abide by it, whilst he is at liberty to appeal from it. For these reasons, it is advisable that all causes, ultimately appealable to the sudder dewanny adawlut, should be made originally cognizable by the provincial courts. In addition to the advantage which the parties in such causes will derive from this measure, it may be expected that it will promote the speedy decision of other suits cognizable in the zillah and city courts, by relieving the judges of a part of their duty." It was accordingly enacted by Section 2, Regulation 13, 1808, that "such part of the existing regulations as vests original jurisdiction in the zillah and city courts of dewanny adawlut, for the institution, trial, and decision, of regular civil suits, in which the cause of action may exceed five thousand sicca rupees, viz. for malgoozary land, the computed annual produce of which, as described in Section 3, Regulation 4, 1793, and Section 3, Regulation 3, 1803, may exceed five thousand sicca rupees; or for lakheraj land, the computed annual produce of which may exceed five hundred sicca rupees; or for a house, tank, garden, or any other description of immovable property, the computed value of which may exceed five thousand sicca rupees; or for money, effects, or other movable property, exceeding in amount or value, the sum of five thousand sicca rupees;" be rescinded. This rule was confirmed with a modified standard of valuation, by Section 6, Reg. 24, 1814; which authorized the judges of the zillah and city courts "to try and determine any civil suits that may be hereafter instituted in their courts; provided the value or amount of the claims, calculated according to the provisions of Section 14, Reg. 1, 1814, (cited, with an amendment, in page 167, vol. III, of this Analysis, under the head of *Stamp Duties*), shall not exceed five thousand sicca rupees." But with a view to promote the convenience of persons residing at a distance from the stations of the provincial courts, it has since been deemed expedient to allow an option of instituting in the zillah and city courts, for trial in the first instance, original regular suits in which the cause of action may exceed five thousand, but not be more than ten thousand sicca rupees; and the following provisions for that purpose have been enacted in Section 2, Regulation 19, 1817:—"First. So much of the rule contained in the first clause of Section 5, Regulation 25, 1814, and of any other regulation in force, as provides that all original suits, in which the amount or value of the claim calculated in conformity with Section 14, Regulation 1, 1814, and Section 23, Regulation 26, 1814, may exceed five thousand sicca rupees, shall be instituted and tried in the first instance in the provincial courts, is hereby declared subject to the following modification." "Second. If the amount or value of the claim, calculated according to the provisions of the Sections above specified, be more than five thousand, but not exceeding ten thousand sicca rupees, it shall be optional with the plaintiff to institute a regular suit, in the first instance, either in the provincial court of the division, under the rules now in force, or in the dewanny adawlut of the zillah or city in which the land, house, or other immovable property, constituting the subject of the suit, may be situated; or if the suit be not for immovable property, in the dewanny adawlut of the zillah or city in which the cause of action may have arisen; or the defendant may reside as a fixed inhabitant, when the suit against him is commenced."

cognizable by the supreme court.<sup>1</sup> The special or limited jurisdiction of the zillah and city courts, in particular cases, provided for by the regulations, will be hereafter noticed: but it may be remarked in this place, that when a landed estate is situated in two, or more, zillah or city jurisdictions, it has been held by the sudder dewanny adawlut to be consistent with the spirit and meaning of the regulations, as well as conducive to justice, that a claim to the entire estate should be received, and tried, by the court of the jurisdiction in which the greater part of the estate may be situated;<sup>2</sup> unless it be deemed proper, in any such case, by the Governor General in Council, or by the sudder dewanny adawlut, to direct the suit to be tried and determined, in the first instance, by the provincial court of appeal, in conformity with Section 6, Regulation 5, 1793.

The civil courts are "prohibited from interfering, in any respect, in any cause or matter of a criminal nature, declared cognizable by the magistrates," and criminal courts; except for contempt, and perjury, committed in open court; the former of which, as well as any undue arrogation, or illegal exertion, of judicial authority, they are authorized to punish, by fining the offender in a sum not exceeding two hundred rupees; according to his situation and circumstances in life; and "keeping him in custody until the fine shall be paid."<sup>3</sup> This restriction against the interference of the civil courts, in cases declared cognizable by the criminal courts, being obviously intended only to prevent the former, whose province is the reparation of private injuries, from exercising the powers vested in the latter, for the ends of public justice; it must not be understood to prohibit a civil action for damages in cases of personal injury, as allowed by the laws of England, instead of, or in addition to, a criminal prosecution. On the contrary, the criminal courts, which, under Section 22, Regulation 9, 1793, might have directed a pecuniary compensation to be made to the party injured, having been expressly forbidden by Section 3, Regulation 14, 1797, (re-enacted for the Upper Provinces, by Section 39, Reg. 7, 1803) to adjudge pecuniary compensations, or damages, (the reimbursement of costs excepted) in any criminal

Claims to estates, in two or more jurisdictions, by what court to be tried.

Civil courts prohibited from interference in criminal cases. Except for contempt and perjury. R. 3, 1793, § 18, and R. 4, 1793, § 21, extended to Benares by § 11, R. 7, and § 2, R. 8, 1795. Re-enacted for ceded provinces, by § 11, R. 2, and § 22, R. 3, 1803. This restriction not meant to prohibit a civil action for damages in cases of personal injury.

<sup>1</sup> Under Section 17, Regulation 3, 1793, the dewanny adawlut of the zillah of the twenty-four pergunnahs was authorized to entertain suits, "concerning marriage or cast, in which no money or other valuable thing may be demanded, although the cause of action shall have arisen, or the defendant may reside, within the limits of the town of Calcutta." But it may be questioned whether this power is now vested in the judge of the suburbs of Calcutta; and the exercise of it does not appear requisite, as the supreme court has jurisdiction in all cases of marriage and cast. By Section 8, 21 George III, cap. 70, it is enacted, that the "supreme court shall not have, or exercise, any jurisdiction, in any matter concerning the revenue, or concerning any act or acts, ordered or done in the collection thereof, according to the usage and practice of the country, or the regulations of the Governor General and Council." But by Section 17, of the same Statute, the authority of that court is reserved, as before, in "all manner of actions and suits against all and singular the inhabitants of Calcutta." It has therefore been directed by Government, (on a reference from the sudder dewanny adawlut in November, 1797) that whenever it may be necessary to apprehend a revenue defaulter, resident in Calcutta, application for that purpose be made, through the Board of Revenue, to the Governor General in Council, who, if it appear to him proper, will order the attachment of the defaulter's person by the revenue officers.

<sup>2</sup> On the 15th March, 1798, the court of sudder dewanny adawlut directed that the claim of Raneé Bishunkoonwur, to lands situated partly in zillah Burdwan, and partly in zillah Hooghly, should be tried by the judge of the former district. In another case, wherein the disputed lands were on the boundaries of two zillahs, in the Dacca division, the provincial court of that division were ordered to try the suit, in the first instance.

<sup>3</sup> The process to be observed, in cases of perjury, before any of the civil courts, will be stated in the second part of this work, relative to criminal justice.

prosecution; it is indispensably necessary, for maintaining the settled principle of law, "that every right, when withheld, must have a remedy, and every injury its proper redress," to consider the power vested in the civil courts, of receiving all suits for "claims to damages for injuries," as extending, not only to every injury of property; but also to every personal injury; whether by actual bodily hurt or insult, by unlawful imprisonment, or by malicious defamation, affecting character, cast, or livelihood. By Section 7, Regulation 2, 1805, however, all suits and complaints for penal damages are required to be preferred to the proper courts of justice, within one year after the cause of action shall have arisen; or as soon afterwards as it may be in the power of the party aggrieved to prefer the same. And with regard to all actions of this description which are merely personal, arising *ex delicto*, for wrongs committed by the defendant, and not involving any claim to property, or compensation for the loss of it, the English rule of law is applicable, that *actio personalis moritur cum persona*.<sup>1</sup>

But all suits for penal damages, required by § 7, R. 2, 1805, to be preferred within one year, or as soon afterwards as may be in the power of the party aggrieved.

Restricted also from entertaining a cause heard and determined by a competent court. R. 3, 1793, § 16. re-enacted for Benares by R. 7, 1795, § 10. and for ceded provinces by R. 2, 1803, § 10.

Or a second suit, after the institution of a prior suit in another court. R. 3, 1793.

§ 12. extended to Benares by R. 7, 1795, and re-enacted for ceded provinces by R. 2, 1803, § 9.

Intention of preceding rules.

The zillah and city courts are also "prohibited from entertaining any cause, which from the production of a former decree, or the records of the court, shall appear to have been heard and determined by any former judge, or any superintendent of a court having competent jurisdiction." If any doubt arise, respecting the competency of the former jurisdiction, the judges are to report the circumstances to the sudder dewanny adawlut and wait the instructions of that court.<sup>2</sup> And after "a suit shall have been instituted in the court of any zillah or city, in which it may have been cognizable, no other zillah or city court is to entertain a suit for the same cause of action; but on proof of the institution of a prior suit, in another competent court, for the same cause of action, the court in which the second suit may be brought is to dismiss it with costs." The judge is further empowered to impose a fine in such cases, as well as in all cases wherein the suit may appear to him frivolous, vexatious, or groundless; "in such amount as he may think proper, upon a consideration of the nature of the case, and the situation, and circumstances in life, of the offender, and commit him to close custody until he pays the fine."

The salutary intention of these rules is obviously to check litigiousness; secure the right and possession of property held under judicial decisions; and guard against a perversion of the public courts of judicature, from the

<sup>1</sup> Vide Blackstone, Book III, cap. 7: wherein the maxim quoted is stated to be "a settled and invariable principle in the laws of England." It may be said that the proper redress for criminal injuries is inflicted by the criminal courts. But punishment of the offender, however proper to deter him, or others, from committing the like offence, is no retribution to the party injured; and it might perhaps be expedient to reinvest the criminal courts with a qualified power of adjudging such reparation in certain cases; as well to overcome the general reluctance to prosecute in those courts, as to obviate the necessity of a second prosecution, for damages, in the civil courts.

<sup>2</sup> Blackstone, Vol. III, page 302.

<sup>3</sup> In the Benares Regulation the terms are—"by any former Resident, Acting Resident, or Native *Hakim*, or superintendent of a court having competent jurisdiction." In the regulation for the ceded provinces, the following words are used, "by any former judge, superintendent of a court, collector, or other officer, having competent jurisdiction or authority."

<sup>4</sup> On the 3d August, 1795, the court of sudder dewanny adawlut, in answer to a reference from the judge of Chittagong, whether an application to the committee of revenue, in a case of landed property, was to be considered as made to a court of competent jurisdiction, within the meaning of Section 16, Regulation 3, 1793; declared their opinion that it was not; both as the court were not informed of any powers vested in the committee of revenue, to take cognizance of such cases, since the institution of courts of dewanny adawlut in 1772; and as these courts, from the time of their institution, have been the regular constituted authorities, for the receipt, investigation, and decision, of all claims of this description.

just ends of their institution, to become the instruments of private enmity, persecution, and oppression. In applying them, therefore, this intention should be strictly attended to; and error, or ignorance, should not be blended with deliberate fraud, or malice: nor is the restriction against rehearing a cause, already heard and determined, applicable to any suit dismissed, in the first instance, for some neglect or default only: without an investigation of, and decision upon, the merits of the case. Sufficient provision has indeed been made by the regulations, to prevent or remedy an injurious misapplication of them in this respect; as well as to authorize a revision of erroneous judgments, upon sufficient grounds being stated to the satisfaction of the *sud-dar dewanny adawlut*; as will be subsequently more fully specified.

By Section 14, Regulation 3, 1793, the *zillah* and city courts of Bengal, Behar, and Orissa, were prohibited from "hearing, trying, or determining" "the merits of any suit whatever, against any person or persons, if the cause" "of action shall have arisen previous to the 12th August, 1765;" (the date of the *deewany* grant to the Company for the above provinces;) "or any" "suit whatever, against any person or persons, if the cause of action shall" "have arisen twelve years before any suit shall have been commenced on" "account of it; unless the complainant can shew, by clear and positive" "proof, that he had demanded the money, or matter in question, and that" "the defendant had admitted the truth of the demand, or promised to pay the" "money;" (within the last twelve years, so as to constitute a new ground of action within the limited period;) "or that he directly preferred his claim" "within that period," (*viz.* within twelve years after the origin of the cause of action,) "for the matters in dispute, to a court of competent jurisdiction," "to try the demand; and shall assign satisfactory reasons to the court why" "he did not proceed in the suit; or shall prove that either from minority," "or other good and sufficient cause, he had been precluded from obtaining" "redress." Similar prohibitions were extended, by Section 8, Regulation 7, 1795, to the province of Benares, with a substitution of the 1st July, 1775, (the date of the actual cession of that province to the Company, under the treaty with the *Newab Vizeer*, of the 21st May preceding;) and with an exception of claims founded on bonds, which may have been in a course of payment by instalments; or of which any proportion may have been paid within twelve years previous to the institution of the suit. Also of all claims on mortgages; the period for rendering which unactionable was left to be determined "by the law of the religion of the defendant." The claims of village *zemindars*, for restoration to their *zemindaries*, of which they were dispossessed by the *Rajahs Bulwunt Sing* and *Chyt Sing*, before the year 1775; and whose lands, in many instances, were farmed out at the period of making the decennial settlement of Benares (1789) in consequence of *Rajah Maheepnarrain's* declining, at that time, to restore them, though he subsequently acquiesced, in the measure as specified in the fifth clause of Section 3, Regulation 1, 1795; are likewise virtually excepted by the provision in that clause, from the general limitation of 1st July, 1775. By the first and second clauses of Section 18, Regulation 2, 1803, the courts of *adawlut*, in the provinces ceded by the *Newab Vizeer* on the 10th November, 1801, "are prohibited from hearing, trying, or determining, the merits of any civil" "suit whatever, if the cause of action shall have arisen at a period, being" "twelve years, antecedent to the date on which the petition for the institution" "of such suit shall be presented to the court;" and the powers vested in them, under this limitation, to receive and try suits in which the cause of action may have originated prior to the 10th day of November, 1801, are declared to be restricted to "suits of a private nature, between individuals;" "of which cognizance would have been taken by the courts, officers, or au-

Limitations of time for the cognizance of actions in the *zillah* and city courts.

R. 3, 1793, § 14. Bengal, Behar, and Orissa.

Preamble to Reg. 2, 1805.

R. 7, 1795, § 8. Benares.

R. 1, 1795, § 3. cited in Preamble to Reg. 2, 1805.

R. 2, 1803, § 18. Provinces ceded by the *Newab Vizeer*, in 1801.



"thorities, established for the administration of justice under the government of the Newab Vizeer." By the third clause of the same section, after twelve years shall have elapsed from the date of the cession of these provinces, the general limitation of twelve years, with the exceptions before cited from Section 14, Regulation 3, 1793, is extended to them; under a provision, to take effect from the same period, (viz. the 10th November, 1813;) "that it shall not be competent to the zillah courts, under the powers vested in them by this clause, to hear, try, or determine, the merits of any civil suit whatever, if the cause of action shall have arisen previous to the 10th day of November, 1801."

Regulation 8, 1805, Sec. 6. Territories ceded by the Peshwá, and Doulut Rao Sendheea, in 1803.

In extending to the territories ceded by the Peshwá, and Doulut Rao Sendheea, the laws and regulations for the administration of civil justice which had been established in the provinces ceded by the Newab Vizeer, it was provided by the Second Clause of Section 6, Regulation 8, 1805, that "in lieu of the date prescribed by Section 18, Regulation 2, 1803, the 30th of December, 1803, in the provinces constituting the zillah of Allyghur, the northern and southern divisions of the zillah of Saharunpore, and the zillah of Agra; and the 16th of December, 1803, in the territory constituting the zillah of Bundelcund; (being the dates on which the said provinces and territories were respectively ceded to the Honorable the English East India Company) shall be considered the periods of limitation for taking cognizance of suits, subject to the several provisions contained in Section 18, Regulation 2, 1803, and in Sections 2 and 3, Regulation 2, 1805." Similar provisions respecting the cognizance of civil suits in newly acquired territories, were also made by the following regulations; viz. Regulation 12, 1806, for annexing the pergunnahs of Sonk, Sonsa, and Sehar, to the jurisdiction of Zillah Agra, in pursuance of a treaty concluded with the Rajah of Bhurtpore, under date the 17th April, 1805; Regulation 22, 1812, for annexing to Zillah Bundelcund the Jageer of the late killadar of Calenger, annexed to zillah Bundelcund, ceded to the British Government on the 19th June, 1812; Regulation 18, 1816, for annexing to Zillah Allahabad the pergunnah of Handya, ceded to the East India Company by the Newab Vizeer on the 1st May, 1816; Regulation 4, 1817, for annexing to Zillah Seharunpore the tract of country called Deyradoon, which was surrendered to the Company by the Rajah of Nepal, under date the 15th May, 1815; and Regulation 2, 1818, for annexing to Zillah Bundelcund the Elakeh of Khundah, appertaining to Pergunnah Mahoba, with certain villages belonging to Pergunnah Choorkee, which were ceded by Nana Govind Row, under a treaty bearing date the 1st November, 1817.

Reg. 12, 1806. Pergunnahs Sonk, Sonsa, and Sehar, annexed to zillah Agra.  
Reg. 22, 1812. Jageer of late killadar of Calenger, annexed to zillah Bundelcund.  
Reg. 18, 1816. Pergunnah Handya, annexed to zillah Allahabad.  
Reg. 4, 1817. Deyradoon annexed to zillah Seharunpore.  
Reg. 2, 1818. Elakeh of Khundah, &c. annexed to zillah Bundelcund.  
R. 14, 1805, § 5. Cuttack, and pergunnahs Puttespore, Kummardichour, and Bograe.  
R. 14, 1805, § 6. Further restriction of suits cognizable in Cuttack; and the three pergunnahs above-mentioned.

In the district of Cuttack, and in the pergunnahs of Puttespore, Kummardichour, and Bograe, (annexed to the zillah of Midnapore) the courts of adawlut are prohibited by Section 5, Regulation 14, 1805, "from hearing, trying, or determining the merits of any civil suit whatever, if the cause of action shall have arisen at a period, being twelve years antecedent to the 14th day of October, 1803, the date on which the fort and town of Cuttack were surrendered to the British arms." It is also declared, by Section 6, of the same regulation, "that the powers vested in the zillah courts, by the foregoing clause, to receive and try suits, in which the cause of action shall have originated prior to the 14th October, 1803, are to be restricted to the trial of suits of a private nature between individuals, of which cognizance would have been taken by the courts, officers, or authorities established for the administration of justice under the government of Maha Rajah Raghojee Bhoomslah; and that such powers are not to be considered to extend to authorizing the zillah courts to take cognizance of any civil suits, originating in acts of the Maha Rajah's Government, or of his officers, or in engagements

"contracted by individuals with the officers of the Maha Rajah's government in their official capacities; and of which, according to the usages of their government, cognizance would not have been allowed to be taken by the persons entrusted with the exercise of judicial authority. This rule shall likewise be considered to be applicable to any suits in the zemindaries of Aul, Cojung, Puttrah, Hurrishpore, Muritchpore, Bishenpore, Kunkah and Kordah, or in which the zemindars, talookdars, farmers, ryots, or other inhabitants of those mohauls, may be parties, either as plaintiffs or defendants, and of which, according to the policy observed by the late Mahratta government with respect to those mohauls, cognizance would not have been taken by the judicial officers of that government." If the zillah judge entertain doubts whether any suit preferred is cognizable by him under the stated restrictions, he is required by Section 7, Regulation 14, 1805, to report the circumstances of the case to the provincial court; "which court shall forward the same, with its opinion thereon, to the sudder dewanny adawlut; and the sudder dewanny adawlut shall submit the case to the Governor General in Council, and shall abide by such orders as he may pass with regard to the admission or rejection of the suit." It is further provided by Section 8, of the regulation referred to, that "after the period of twelve years shall have elapsed from the date of the conquest of the province of Cuttack, the courts of adawlut are prohibited from hearing, trying, or determining the merits of any civil suit, with the exception of the suits described in Sections 2 and 3, Regulation 2, 1805, if the cause of action shall have arisen at a period, being twelve years, antecedent to the date on which the petition for the institution of such suit shall be presented to the court; unless the complainant can show by clear and positive proof, that he had demanded the money or matter in question, and that the defendant had admitted the truth of the demand, or promised to pay the money; or that he directly preferred his claim, within that period, to the matter in dispute, to a court of competent jurisdiction; or person having authority, whether local or otherwise, for the time being, to hear such complaint, and to try the demand; and shall assign satisfactory reasons to the court why he did not proceed in the suit; or shall prove that either from minority, or other good and sufficient cause, he was precluded from obtaining redress; provided however, that it shall not be competent to the zillah courts, under the powers vested in them by this clause, to hear, try, or determine the merits of any civil suit whatever, if the cause of action shall have arisen previous to the 14th day of October, 1803."

Section 7.  
Zillah judge how to proceed if it appear doubtful whether a suit is cognizable under above restrictions.

Section 8.  
Rule of limitation to be observed after twelve years shall have elapsed from the date of the conquest of Cuttack.

The period of twelve years, adopted in all the regulations abovementioned, appears to have been established, when the administration of civil justice was first committed to the servants of the Company, on the institution of courts of dewanny adawlut in 1772; and in the plan then proposed by the committee of circuit it is remarked, that "by the Mahomedan law all claims which have lain dormant for twelve years, whether for land or money, are invalid. This also is the law of the Hindoos; and legal practice of the country." This observation does not appear to be correct with respect to the Hindoo and Mahomedan laws; though it may have been, with regard to the legal practice

Preamble to Regulation 2, 1805.  
Explanation of limit of twelve years.

<sup>1</sup> On the 26th January, 1810, the Vice-President in Council, in answer to a question from the court of sudder dewanny adawlut, declared his opinion "on a reference to the latter part of § 6, R. 14, 1805, that no suit, in which the cause of action arose previously to the 15th October, 1803, can be entertained in the zillah or provincial court, against the zemindary of Cojung, and the other zemindaries therein specified;" and added, "that rule was founded on the relation in which those persons stood towards the Mahratta government, having exercised a sort of sovereign power; and maintained a state of independence, only paying a certain tribute to the government of Berar."

of the country ; and whether previously established, or not, the rule having been so long in force, it would be improper to abrogate it. But the declared grounds on which this limitation was introduced, viz. "the litigiousness and perseverance of the natives of this country, in their suits and complaints, " often productive not only of inconvenience and vexation to their adversaries, " but also of endless expense and actual oppressions," are not applicable to suits for the recovery of public rights and dues, instituted on the part of government, under the provisions made by the regulations for subjecting the public claims and interests to the cognizance and decision of the established courts of justice. For such suits and claims, the unlimited time, heretofore allowed by the laws of England, (as by those of the Hindoos), has been latterly restricted to a period of sixty years ;' being the largest period fixed for the judicial cognizance of the claims of individuals in particular cases. This period is recognized by the provisions of the Hindoo law in regard to individuals ; and is not incompatible with those of the Mahomedan law. Under the former it is applied to private rights and claims, in cases of unmolested possession, without proof of a bad title. And the distinction between *bona fide* possession, under a title believed good and sufficient, and *malá fide* possession, obtained by fraud or violence, and therefore known to be insufficient, has been taken in the Hindoo law, as in the laws of all countries, wherein the long and peaceable possession of things capable of becoming private property, under a just title, believed by the possessor to have vested in him a full right of property, is held and admitted to have established such right of possession and property ; or at least to bar any legal claim against the possessor. On consideration therefore of the several circumstances stated, (as set forth in the preamble to Regulation 2, 1805), and with a view to provide more effectually for securing the rights of the public, and of individuals, in the several cases recited, the following explanatory and additional rules were enacted by that regulation.

"The limitation of twelve years for the commencement of civil suits, under certain provisions and exceptions, which, in pursuance of former rules and practice, has been continued and prescribed by Section 14, Regulation 3, 1793 ; Section 8, Regulation 7, 1795 ; and Section 18, Regulation 2, 1803 ; shall not be considered applicable to any suits for the recovery of the public revenue, or for any public right or claim whatever, which may be instituted by, or in behalf of, government, with the sanction of the Governor General in Council, or by direction of any public officer or officers, who may be duly authorized to prosecute the same on the part of government. All claims on the part of government, whether for the assessment of land held exempt from the public revenue without legal and sufficient title to such exemption, or for the recovery of arrears of the public assessment, or for any other public right whatever, (the judicial cognizance of which may not have been otherwise limited by some special rule or provision in force) shall be heard, tried, and determined in the several courts of civil justice, to which the cognizance thereof may properly belong, under the general regulations which have been or may be hereafter enacted, if the same be regularly and duly preferred at any time within the period of sixty years from and after the origin of the cause of action : provided that such cause of action shall not have originated, within the provinces of Bengal, Behar, and Orissa, before the 12th August, A. G. 1765 ; or within the province of Benares, before the 1st July, A. C. 1775 ; or within the provinces ceded by the Newaub Vizier before the 10th November, A. C. 1801 ; being the periods of the Company's accession to the civil government of the above provinces respectively."

Not applicable to public suits, instituted on the part of government.

Period of 60 years allowed by the Hindoo law to establish a right of property in cases of unmolested possession, without proof of a bad title. Distinction between *bona fide* and *malá fide* possession.

Explanatory and additional provisions made by Reg. 2, 1805.

Section 2. Within what period claims on the part of Government may be received and tried.

<sup>1</sup> By the statute 9, Geo. III. cap. 16. Vide Blackstone, vol. iii, p. 307.

"The limitation of twelve years fixed by Section 14, Regulation 3, 1793, Section 8, Regulation 7, 1795, and Section 18, Regulation 2, 1803, shall also not be considered applicable to any private claims of right to lands, houses, or other permanent, immovable property; if the person or persons in possession of such property, when the claim of right thereto may be preferred in a competent court of judicature, shall have acquired possession thereof by violence, fraud, or by any other unjust, dishonest means whatever; or if such property shall have been so acquired by any other person or persons from whom the actual occupant or occupants may have derived his or their title, and shall not have been subsequently held under a just and honest title (such as inheritance, purchase, fair donation, or any other fair title, believed to have conveyed a right of possession and property) during a period of twelve years, antecedent to the time of preferring a claim of right thereto in a competent court: provided that such violent, fraudulent, unjust, or dishonest acquisition be established to the satisfaction of the court in which the claim may be preferred; or, if the suit be appealable, to the satisfaction of the proper court of appeal."

"In all such cases, viz. when the original cause of action may have arisen more than twelve years before the institution of the suit, and the claim may not be cognizable under the exceptions and provisions contained in the regulations and sections above cited; but may be nevertheless cognizable under the provision made by the preceding clause, from the defendant's having acquired possession of the claimed property by violence, fraud, or other unjust and dishonest means, or from the property, after being so acquired by any other person, not having been subsequently held by the present occupant, and his predecessors, under a just and honest title, during the prescribed period of twelve years; the plaintiff shall set forth the same distinctly, either in his petition of plaint, or in his replication. The court, after taking the answer and rejoinder of the defendant, shall, if the alleged unjust and dishonest acquisition be denied by the defendant, examine any evidence that may be adduced by the plaintiff in proof of his allegation; as well as any evidence that may be brought by the defendant to prove his just and honest acquisition of the property claimed; or the just and honest possession thereof by himself and his predecessors, during more than twelve years; after which, the court shall determine whether the suit in question be cognizable under the present rule, or otherwise; and if such determination be in favor of the plaintiff; or in appealed cases, if a determination for the cognizance of the suit be passed by the court of appeal; the merits of the plaintiff's claim of right shall be heard, tried, and determined, notwithstanding the lapse of time, in like manner as if the claim had been regularly preferred within twelve years after the origin of the cause of action."

"Provided, that nothing in the preceding clause, or in any part of the existing regulations, shall be held to authorize the cognizance of any suit whatever, in any court of justice, if the cause of action shall have arisen sixty years before the institution of such suit. Nor shall any plea on the part of the plaintiff, for the nonprosecution of his claim of right during a period of sixty years, after the origin of his alleged cause of action, nor any original defect of title on the part of the possessor of the property claimed, after the elapse of such period, be deemed a sufficient ground for taking judicial cognizance of any suit so preferred. Moreover, although the property claimed may have been acquired by an insufficient title within the period of sixty years, hereby fixed as the utmost limit for the cognizance of any claims in the established courts of justice; if the property so acquired shall have descended by inheritance to the person in possession when the claim thereto may be preferred, after an elapse of twelve years; or if such person shall

Section 3.  
Clause first.  
To what private claims of right to land, or other immovable property, the limitation of twelve years, is not applicable.

Clause second.  
Form of proceeding to be observed in such cases.

Clause third.  
Suit not cognizable in any case if the cause of action shall have arisen sixty years before the institution of it.

Nor, in certain cases, within the period of sixty years.

have obtained just and honest possession thereof by purchase, fair donation, or by any other title believed to be just and valid, and not appearing to be in any respect collusive, for the purpose of depriving the plaintiff of his right; and either such occupant himself, or any other person in his behalf, or from whom the property may have been obtained under any of the titles aforesaid, or the whole in succession, shall have held quiet and unmolested possession, under a title believed to be just and valid, during a period of twelve years antecedent to the time of a claim thereto being preferred in a competent court; the provisions made by the foregoing clauses shall not be considered applicable to any private claims to property so circumstanced; which are therefore to be deemed inadmissible, as heretofore, after twelve years from the origin of the cause of action, unless the same be cognizable under the exceptions and provisions already in force."

Clause fourth. Provision for cases of mortgage and deposit, in which no proprietary right may have been conveyed to the occupant.

"Provided further, that no length of time shall be considered to establish a prescriptive right of property, or to bar the cognizance of a suit for the recovery of property, in cases of mortgage, or deposit, wherein the occupant of the land or other property may have acquired, or held, possession thereof as mortgagee, or depositary only, without any proprietary right; nor in any other case whatever wherein the possession of the actual occupant, or of those from whom his occupancy may have been derived, shall not have been under a title *bonâ fide* believed to have conveyed a right of property to the possessor."

Reg. 2, 1805, Sec. 4, and 5. Limitation of time in summary cases of arrears of rent; and forcible dispossession. Sections 6 and 7. And for the recovery of penal damages, fines, and penalties.

The further provisions contained in the same regulation, whereby a limitation of time is fixed for the delivery of applications to the courts of justice, to obtain the summary inquiry and process authorized in cases of arrears of rent; and of forcible dispossession from land, crops, or other property; will be hereafter noticed, with the special rules and process to which such provisions refer. It has been already observed that all complaints for penal damages (defined to comprehend all "pecuniary penalties on account of any act or omission, in opposition to the laws and regulations, exclusive of a compensation for actual losses;") in cases wherein such damages are allowed to individuals, and for the recovery of which by judicial process no specific period may have been fixed, are required to be preferred within one year, or as soon afterwards as it may be in the power of the party aggrieved, to prefer the same.<sup>1</sup> The same period is fixed for preferring "all suits, complaints, and informations, cognizable by the civil courts, for the recovery of any fine, or penalty, receivable by government, or by the informer, on account of the unlicensed manufacture or sale of intoxicating liquors or drugs; the illicit manufacture or sale of salt or opium; the fraudulent evasion of the stamp duties prescribed by the regulations; or on account of any other fines, or penalties, recoverable, either by a regular suit, or by summary process, in the courts of dewanny adawlut, under any regulation in force, which may not have fixed a specific period for the recovery thereof." And no such suit is to be admitted after the prescribed time, unless prosecuted on the part of government, and sufficient cause be assigned why it was not brought forward within one year after the commission of the act upon which the fine or penalty is demandable.

Rules for receiving, trying, and deciding, suits cognizable in the zillah and city courts.

In stating the principal rules enacted, "for receiving, trying, and deciding, suits or complaints" declared cognizable in the zillah and city courts,

<sup>1</sup> It is at the same time provided, "that this restriction be understood to be strictly applicable to penal damages only; and be not considered applicable to any suits for the recovery of property, or the value of property appertaining to the plaintiff; or for a compensation or indemnification, on account of any damage to, or loss of, property actually sustained by the plaintiff, in all which cases the general rules of limitation are to be applied."

it is necessary to premise, that these relate to the general course of proceeding in regular suits, for which a summary or other special process has not been prescribed. It may also be previously remarked that the judges of the zillah and city courts, in common with the provincial courts and sudder dewanny adawlut, are "prohibited corresponding by letter with parties in suits, process, or matters depending before them; or coming within their cognizance. If a party in a suit, or any person amenable to the jurisdiction of the court, shall have any matter to represent to the court, he is either to appear in the court in person and represent the matter in writing, or make the representation in writing through an authorized vakeel (pleader).<sup>1</sup> The court is to pass whatever order, upon the representation, may appear to it proper, consistently with the regulations; and to direct a copy of the order to be delivered to the person making the representation, or to his vakeel, under the seal of the court, and attested by the register." It is further provided, for all the civil courts, that in cases within their jurisdiction, for which no specific rule may exist, they "are to act according to justice, equity, and good conscience."

Chiefly applicable to regular suits.

R. 3, 1793, §19, extended to Benares by R. 7, 1795, §7, and re-enacted for ceded provinces by R. 2, 1803, §20. Prohibition of correspondence with parties. Representations to the court, in what manner to be made. Court to pass an order and deliver a copy of it.

R. 3, 1793, §21, extended to Benares by R. 7, 1795, §11, and re-enacted for ceded provinces by R. 2, 1803, §17. General provision, where no specific rule exists.

<sup>1</sup> An exception to this rule has been made by Regulation 15, 1816, "for expediting the trial of civil suits in which the native officers and soldiers attached to regular corps on the military establishment of the presidency of Fort William may be parties; and for giving to them certain facilities, in the maintenance of their rights, claims, and interests." Other general rules for the trial of civil suits are likewise modified by this regulation, in cases wherein any of the native officers or soldiers, therein mentioned, may be plaintiffs or defendants. It will therefore be useful to state the regulation at length, in this place; except the forms detailed in its Appendix; and Section 11, which recites the substance of general orders passed by the Vice President in Council, on the 10th April, 1810, and 22nd July, 1814; whereby the sub-treasurer at the presidency, the residents at Delhi and Lucnow, the collectors of the land-revenue, and the paymasters at stations subject to the presidency of Fort William, are authorized to grant bills in duplicate, payable at sight, and at the usual rate of exchange, on any other treasury, for any sums which may be paid into their respective treasuries, on account of native officers or soldiers, who may be desirous of remitting money from one part of the country to another."

"Whereas by the local distribution of the regular forces on the military establishment of the presidency of Fort William, the native officers and soldiers are liable to be stationed at places remote from their homes and families, and whereas the constitution and nature of the service render it generally impracticable to grant to the native officers and soldiers a frequent or prolonged leave of absence from their military duties, in consequence of which, material difficulty and embarrassment have been unavoidably experienced by them in maintaining and preserving their just rights, claims, and interests; and whereas the fidelity and courage exhibited by the native troops, in various wars on the continent of India, and the zeal and alacrity, which they have uniformly displayed in voluntarily embarking on foreign expeditions, entitle them to the favorable consideration of government; the Governor General in Council, with the view of manifesting his sense of their good conduct, and of affording to them every facility in the maintenance of their rights, claims, and interests, which can be granted consistently with a due regard to the fundamental principles established for the administration of civil justice, and for the collection of the land revenue; has enacted the following rules, to be in force from the period of their promulgation, throughout the territories immediately dependent on the presidency of Fort William. § 2. Such parts of the regulations in force as prohibit the courts of civil justice from corresponding by letter with parties in depending suits; or as direct that no pleadings shall be received in any civil cause except from the parties or their authorized pleaders; such parts of the regulations in force as require generally, that depending cases shall be brought to trial according to the order in which they may stand on the file; and such parts of the regulations in force, as prohibit the courts from furnishing copies of decrees, or from receiving mokhtarnamahs on any other paper than the prescribed stamp paper; are hereby declared to be subject to the modifications contained in the following sections of this regulation. § 3. *First.* Whenever a native officer or soldier on the military esta-

R. 4, 1798, § 2.  
 extended to  
 Benares, by R.  
 8, 1798, § 2.

The first rule for receiving suits in the zillah and city courts is, that "no complaint be received, but from the plaintiff; nor any answer to a com-

plaint of the presidency of Fort William may be desirous of instituting a regular or summary suit in any of the local courts of civil judicature, and shall not be able to obtain a furlough or leave of absence for the purpose of superintending or conducting such suit in person, he shall be at liberty to execute a *mokhtarnamah* or power of attorney, drawn up according to the form No. 1. in the appendix to this regulation, authorizing and appointing any member of his family, or other person, to institute and carry on the suit, and to perform all acts in the original trial of the cause, and eventually in appeal, in the same manner as if the party were himself personally present and consenting. *Second.* Such *mokhtarnamah* shall not be required to be written on stamp paper, but shall be executed by the native officer or soldier in the presence of the commanding officer of the corps or detachment to which he may belong, who shall countersign the same in testimony of its having been voluntarily executed. *Third.* The *mokhtarnamah* so executed is to be transmitted by the commanding officer, under cover of a public letter drawn up in the form No. 2, of the appendix, addressed to the register of the court in which the suit is to be instituted, and upon the receipt of such letter, a notice shall be issued by the court for the purpose of procuring the attendance, either personally, or by a constituted *vakeel*, of the person nominated in the *mokhtarnamah*. *Fourth.* If such person shall refuse to attend the court in person, or by a constituted *vakeel*, or shall decline to undertake the trust, or shall subsequently die, or be prevented by any other sufficient cause from discharging the duty confided to him, the court shall cause information of the same to be communicated to the native officer or soldier, by an extract from the proceedings of the court enclosed in an official letter to be addressed by the register, or in his absence by the judge, to the commanding officer of the corps. *Fifth.* If the person nominated and appointed in the *mokhtarnamah* shall attend the court in person, or by a constituted *vakeel*, and shall consent to undertake the duty confided to him, the original *mokhtarnamah* shall be deposited in the court and annexed to the proceedings which may be held on the suit. The *mokhtar* or attorney, so appointed and attending, may at his option, either prosecute the suit, and conduct the pleadings in person, or may constitute for that purpose one or more of the authorized pleaders of the court, under the provisions of Regulation 27, 1814. In all other respects the suit shall be instituted, tried, and determined in conformity with the general rules in force for the institution and trial of other similar suits; provided however that, when the native officer or soldier, who may be the real party in the suit, shall not be himself present at the time of its decision, an authenticated copy of the decree, written on unstamped paper, shall, in each instance be transmitted, through the register of the court, to the commanding officer of the corps or detachment, for the purpose of its being communicated to the native officer or soldier. *Sixth.* It is hereby explained that no part of the preceding clauses, or of the subsequent provisions of this regulation, is intended to be applicable to claims originating in loans granted by a native officer or sepoy, or in pecuniary transactions of a commercial nature. § 4. *First.* For the purpose of preventing, as far as may be practicable, the occurrence of *ex parte* trials in suits instituted against native officers or soldiers, it is hereby further enacted, that whenever a suit may be instituted in any civil court against a person being a native officer or soldier attached to a regular corps on the military establishment of the Honorable Company under the presidency of Fort William, the plaintiff or appellant shall be required to state the same distinctly in his plaint or petition of appeal; and to specify, to the best of his knowledge and belief, the corps to which such native officer or soldier may be attached. If the plaintiff or appellant shall be unable to specify the corps, it shall be the duty of the court trying the suit to endeavour to ascertain the point, by such means of enquiry as may appear practicable and expedient. *Second.* A notice in the usual form, together with a copy of the plaint or petition of appeal on unstamped paper, enclosed in an official letter drawn up according to the form No. 3, of the appendix, shall be then transmitted by the register, or in his absence by the judge, to the commanding officer of the corps, for the purpose of its being communicated to the native officer or soldier against whom the suit may have been instituted: a similar notice shall be issued, when omitted in the first instance, from ignorance of the defendant's being a native officer or soldier attached to a regular corps, if at any subsequent period, during the trial of the suit, it should appear to the court that the defendant or respondent is a native officer or soldier as above de-

“plaint, but from the defendant; or their respective vakeels duly empowered. and re-enacted  
 “Nor is any person to be permitted to do any act, or to be heard, *visà voce*, for ceded-pro-  
 1803, § 2.

scribed; and in cases in which the plaintiff or appellant shall wilfully and intentionally omit to state in his plaint, or petition of appeal, that the defendant or respondent is a native officer or soldier, the court shall impose on such plaintiff, or appellant, a discretionary fine, not exceeding one fourth of the amount of the institution fee or stamp duty in each case. *Third.* The commanding officer after causing the notice to be served on the party to whom it is addressed, if practicable, shall return it to the register or judge, with the written acknowledgment of the party, endorsed thereupon, together with any mokhtarnamah, which the party may be desirous of executing according to the form No. 1, in the appendix, for appointing an attorney to defend the suit in his behalf. If from any cause the notice transmitted to the commanding officer cannot be served upon the native officer or soldier, to whom it is addressed, it shall be returned by the commanding officer to the register or judge from whom it may have been received, with information of the cause which has prevented the service of it. In such case the court shall either make a further reference with the view of causing the notice to be duly communicated to the native officer or sepoy; or shall adopt such other measures for that purpose as on a consideration of the circumstances of each case may appear to be proper and consistent with the regulations.

§ 5. *First.* When a native officer or soldier may obtain a furlough for the purpose of instituting or defending a civil suit in any of the local courts of civil judicature, he shall be at liberty to request from the commanding officer of the corps or detachment, an official letter addressed to the register of the court in which the suit is to be tried; such letter shall be drawn up according to the form No. 4, of the appendix to this regulation, but shall not give cover to any petition, nor contain any statement or explanation of the merits or circumstances of the case. *Second.* Such letter shall be delivered in person by the native officer or soldier to the register, or in his absence, to the judge of the court, who is hereby authorized, at the request of the party, to nominate a vakeel of the court for the purpose of furnishing to the native officer or soldier his legal aid and advice in preparing the pleadings and in carrying on the prosecution or defence of the suit. The register, or judge, shall at the same time cause the native officer or soldier to be duly apprized of the provisions contained in Regulation 27, 1814, and of any other regulation in force, relative to the duties and established fees of the pleaders attached to the civil courts, which must of course be observed whenever a native officer or soldier may wish to consult or employ a pleader. § 6. Nothing contained in the preceding section shall be construed to prohibit a native officer or soldier from pleading his cause in person, or from employing any other authorized pleader of the court, whom he may prefer, instead of the pleader nominated for him by the court.

§ 7. *First.* The courts of civil judicature are hereby authorized and required to bring to a hearing, without regard to the order in which they may be filed, all suits, excepting those of the nature alluded to in the sixth clause of section 3, of this regulation, in which a native officer or soldier, who may have obtained leave of absence from his corps, may be a party, and to pass a decision on such suits as speedily as may be consistent with the general rules in force, and with the due administration of justice. *Second.* If the cause cannot be brought to a decision previously to the expiration of the furlough granted to such native officer or soldier, the judge or register before whom the suit may be depending, is hereby vested with a discretionary authority to grant to such native officer or soldier an extension of his leave of absence for a period sufficient to admit of a reference being made to the commanding officer of the corps, with a view to ascertain whether the furlough can be prolonged for any further specific period. But whenever a judge or register may avail himself of the discretion above vested in him, he shall be careful to report the same immediately in an official letter to the commanding officer of the corps to which the native officer or sepoy may be attached. *Third.* In all cases in which a native officer or soldier may return to his corps before a final decision can be passed in his suit, he shall be at liberty either to leave the further conduct of the suit to a constituted mokhtar under a mokhtarnamah, duly executed according to the form No. 1, in the appendix to this regulation, or to one or more of the established pleaders of the court empowered to act for him by a regular vakalutnamah. In either case a copy of the decree which may be passed in the suit shall be transmitted for the information of the native officer or soldier, in the manner prescribed in the fifth clause of section 3, of this regulation. § 8. Whenever any land or real property be-



Rule for receiving plaint and pleadings.

Whether any *visu voce* argument, or motion, be allowable.

R. 4, 1793, § 3, extended to Benares by R. 8, 1795, § 2, and re-enacted for ceded provinces, by R. 3, 1803, § 3.

"in any stage of a cause, excepting the plaintiff or defendant, or their vakeels or witnesses." The regulations for the appointment and control of vakeels, or native pleaders, in the civil courts, will be subsequently mentioned. And it will be sufficient to remark on the rule cited, (which is common to all the civil courts), that the terms of it should remove a doubt entertained, whether any *visu voce* argument, or motion, be allowable; although it is equally clear, from Section 19, Regulation 3, 1793, already quoted, and Section 5, Regulation 4, 1793, hereafter noticed, that all regular pleadings in depending causes, as well as generally all representations to the court for orders, are required to be in writing.

It is next directed, that "every complaint, which may be presented to the court, shall state precisely the matter of complaint. If the complaint shall be concerning a zemindary, or an independent, or a dependent talook, or any landed property being lakheraj (exempt from the payment of revenue to

longing to a native officer or soldier may be attached by a court of justice, for the purpose of realizing the amount of any judgment, fine, or penalty, imposed on such native officer or soldier, the court shall cause notice of the same to be issued in the manner prescribed in the second clause of Section 4, of this regulation, and shall postpone the sale for such definite period as may appear reasonable, for the purpose of affording an opportunity to the native officer or soldier to discharge the amount of the judgment, fine, or penalty. § 9. *First.* Any registered proprietor of an estate paying revenue to government, who may be entertained as a native officer or soldier on the military establishment under the presidency of Fort William, shall be at liberty to notify the same in a petition to the collector, specifying the rank which he may hold and the designation of the corps to which he may be attached. A memorandum of such notification shall be inserted by the collector in the public registers and accounts relative to the estate and its assessment, and in cases in which the estate, or a portion of the estate, of a native officer or soldier, who may have duly made such notification, shall become liable to public sale for the recovery of an arrear of revenue, the collector shall address an official letter to the commanding officer of the corps, drawn up in the form prescribed in No. 5, of the appendix to this regulation; the collector shall enclose in such letter a written notice, signed and sealed by himself, and attested by the principal native officer on his establishment, specifying the amount of the arrear, the date on which it became due, and requiring it to be paid at the treasury of the collectorship within such limited period of time, as on consideration of the distance at which the corps may be stationed, and other circumstances of the case, may appear to be proper and reasonable. *Second.* The commanding officer of the corps shall acknowledge the receipt of the collector's letter, and shall specify the date on which the notice may have been communicated to the party, or the circumstances which may have rendered it impracticable to make such communication. *Third.* If the native officer or soldier shall omit to discharge the arrear within the term specified in the notice, the collector shall report the circumstances of the case to the board of revenue, or to the board of commissioners, or to the commissioner in Behar and Benares respectively, transmitting at the same time a copy of the notice and of his correspondence with the commanding officer, and shall be guided in his further proceedings by the orders which he may receive in each case from the board or commissioner. § 10. *First.* Nothing contained in this regulation shall be construed to affect or to alter the rules and provisions of Regulation 20, 1810; or to authorize the commanding officer of any corps or detachment to correspond with the civil courts, or with the collectors, regarding the merits of any judgment, or order, passed by them in the discharge of their official duty, under the provisions of this regulation. *Second.* Nothing contained in this regulation shall be construed to modify, or to affect the existing rules for the trial of civil suits, in which persons, who may have been discharged from the service, or who may be attached to provincial battalions, or to local or irregular corps, or who may be camp followers, or non-combatant retainers of the army, or who may be relations, or members of the family of a native officer or soldier, may be parties; the foregoing provisions of this regulation are to be considered as strictly and exclusively applicable to native officers or soldiers who may be entertained in regular corps and on the actual strength of the army, on the establishment of the presidency of Fort William."

government), or malgoozary (subject to the payment of revenue to government), it shall state the amount of the annual produce of the land, according to the most accurate estimate which the claimant may be able to obtain. To obviate all doubt respecting what is meant by the annual produce of lakheraj and malgoozary lands, it is declared to be the aggregate of the sums which may have been paid under the regulations by the dependent talookdars, underfarmers, and ryots, on account of the year in which the claim may be preferred; and which would be payable by them, were the claimant to be put into possession of the lands during that year.<sup>1</sup> If the complaint shall be for a house, garden, tank, or any real property, not being malgoozary or lakheraj land; or any valuable thing, or relating to marriage or cast, or for damages for any injury; it shall state, according to the nearest estimate, the exact sum of money, or the amount in which the plaintiff may be endamaged. The complaint shall also specify the name of the person complained against, and the time when the cause of action arose; and shall be signed by the complainant, or his vakeel duly authorized. The complaint shall be signed and numbered, and dated in the order in which it may be received, by the judge of the court; and shall be registered in a book by a native officer of the court, whose particular duty it shall be to copy and register complaints. Every

What the plaintiff is to contain. If it is for land, the annual produce to be specified. What is meant by the annual produce.

If for other property, the amount or value.

Plaint to specify the name of the defendant, and when it arose, and to be signed. Judge to sign, number, and date the plaint, which is to be registered in a book.

<sup>1</sup> The gross rent-produce is here described. In Section 8, Regulation 1, 1801, the "actual produce" of land-estates is defined to be "the neat annual rent, or other neat produce, receivable by the proprietor, after deducting from the gross rent, or other gross produce, the actual expense of collection, and other usual charges of management." Neither the gross or neat produce is however now established, as the standard of valuation for malgoozary land, constituting an entire estate, distinctly assessed, or a specific proportion of such estate. By Section 14, Regulation 1, 1814, (cited at length, under the head of *Stamp Duties*, in vol. iii, p. 166 of this Analysis) it is directed that "in suits for land paying revenue to government, the value of the property shall be assumed in the ceded and conquered provinces, including Cuttack, at the amount of the annual jumma payable on account of the land in question to government; and in the provinces of Bengal, Behar, Benares, and Orissa, (excepting Cuttack) at three times the amount of the annual jumma payable on account of the land to government." By the same regulation, the fees previously paid on the institution of civil actions, and on summonses and exhibits, were discontinued; and stamp duties established in lieu of them, to be levied by means of stamp paper, bearing a prescribed rate of duty. The following additional provisions respecting the valuation of malgoozary land, not distinctly assessed; and claims to leasehold or other tenures in land, not involving a proprietary right, are enacted in Section 5, Regulation 19, 1817: "It being declared in Section 28, Regulation 26, 1814, that in suits for malgoozary land, not constituting an entire estate, distinctly assessed, or a specific proportion of such estate, the value of the land claimed is to be assumed and estimated according to clause third, Section 14, Regulation 1, 1814; and a doubt having been entertained in what manner the rule cited in that clause from Section 3, Regulation 4, 1798, and Section 3, Regulation 3, 1803, should be applied to the valuation of malgoozary lands, not distinctly assessed for the public revenue in some cases; particularly in boundary disputes, when the judgment for or against the plaintiff, may not occasion any alteration in the public assessment; it is hereby explained, that in all claims to a right of property, or to a permanent tenure of any description, in malgoozary land, not constituting an entire estate, distinctly assessed, with a sudden jumma payable to government; or a specific proportion of such an estate; so as to come within the rule prescribed in the first clause of Section 14, Regulation 1, 1814, the value of the land sued for is to be assumed at its computed annual rent produce, as described in Section 3, Regulation 4, 1793, and Section 3, Regulation 5, 1803. If the suit be not for a right of property, or for a permanent tenure, but for a term leasehold of any denomination, during a limited term; or for any interest in the land during a limited period only; the valuation of the plaintiff's claim, in pursuance of the regulations abovementioned, is to be made according to the nearest estimate that can be formed of the actual value of the thing sued for; or if the suit be for damages, the amount in which the plaintiff is endamaged."

In what language the plaintiff, answer, reply, and rejoinder, are to be written.

complaint, answer, reply, and rejoinder, shall be written in the Persian language and character; or in the Hindoostanee language and Naguree character; (or in the Bengal or Oriyah language and character, in the provinces of Bengal and Orissa respectively;) and the parties shall be permitted to deliver their pleadings in whichever of those languages and characters they may think proper."

Rules of process originally established by Reg. 4, 1793, § 5, extended to Benares by R. 8, 1795, § 2; and re-enacted for ceded provinces by R. 9, 1803, § 6. Summons to be issued on defendants.

Security to be required from defendants.

R. 11, 1797, § 3.  
R. 3, 1803, § 29.  
R. 3, 1802, § 2.  
R. 14, 1803, § 8.

Amended rules enacted by Regulation 2, 1806.

Section 2. Notice to be issued to defendants in civil suits, in the first instance.

Notice how to be served if the defendant have an accredited agent at

Upon a complaint being preferred, conformably with the preceding rules, to the proper zillah or city court, previous to the enactment of Regulation 2, 1806, "for explaining and amending, in certain cases, the rules of process to be observed by the civil courts of judicature," the court was required, (by Section 5 of Regulations 4, 1793, and 3, 1803,) to issue a summons on the defendant, containing a short account of the demand, and requiring the defendant to accompany the officer deputed to serve the summons, or to deliver to him good and sufficient security to appear in person, or by vakeel, and answer to the complaint on a day appointed. The form of the security bond to be executed by the sureties for the appearance of defendants, was prescribed in Section 3, Regulation 11, 1797; (re-enacted for the ceded provinces by Section 29, Regulation 3, 1803;) and for the relief of defendants, in cases of undue or exaggerated demands, by Section 2, Regulation 3, 1802, (corresponding with Section 8, Regulation 14, 1803, for the ceded provinces,) the judge was authorized to fix the extent of the security to be required for the appearance of the defendant, in the first instance; with directions, whatever might be the claim of the plaintiff, to demand from the defendant such security only as might appear necessary to secure his appearance during the trial of the suit. But if, at any time in the course of the trial, the security so taken should appear to the judge insufficient, he was authorized and required to take such further security as he might think necessary, to secure the defendant's appearance until a final judgment be passed on the case. But the general and indiscriminate requisition of security from defendants, in the first instance, appearing to be objectionable, as "in many instances the small amount of the claim, and the known property and responsibility of the defendant, render the demand of security unnecessary and vexatious; the following amended rules of process were established by Regulation 2, 1806.

§ 2. "First. Upon the institution of a civil suit in the mode prescribed by the regulations, in any zillah or city court, the general first process against the defendant, instead of the summons and requisition of security for appearance prescribed by Section 5, Regulation 4, 1793, and Section 5, Regulation 3, 1803, shall be a notice only, containing a short statement of the demand, with a requisition to attend in person or by vakeel, and to deliver an answer to the plaintiff, on or before a certain day, to be specified in the notice."

"Second. If the defendant have an accredited agent at the place where the court is held, expressly empowered, either by a clause in his general moktarnamah, or by a separate moktarnamah granted for that purpose, to

<sup>1</sup> Or defendants, provided they have a joint interest in the matter at issue in the cause; or are jointly answerable for the plaintiff's claim. But it has been ruled by the court of sudder dewanny adawlut, in more than one instance, that a suit against several defendants, who were not jointly bound to the plaintiff, nor had any joint interest in the cause, should not have been received and tried as a collective suit; and may be dismissed, as irregularly instituted, leaving the plaintiff to prefer a separate claim against each person, not jointly concerned with others. The plaintiff however may be allowed to rectify his plaintiff, when erroneously preferred, in such cases, if it has not been proceeded upon; and it is the duty of the judge to reject, in the first instance, any complaint which may not be preferred in conformity with the regulations.

receive on behalf of his constituent notices or other judicial processes, which may not be specially ordered to be served personally by an officer of the court, the notice to be issued under the preceding clause shall be tendered to such agent, to be communicated to his principal; and the agent's acknowledgment, to be endorsed upon it, shall be accepted as a sufficient service of it; if he be desirous of giving such acknowledgment in preference to the notice being served on the person of his principal by an officer of the court."

the place where the court is held.

"*Third.* If the defendant shall not have an accredited agent at the place where the court is held; or if he shall not have expressly authorized his agent to receive notices of the above description; or if such agent shall decline receiving the notice for communication to his constituent, and the defendant be resident within the jurisdiction of the court; it shall be served on him through the nazir of the court, by a single chuprassy or peon; who shall require only the acknowledgment of the defendant to be endorsed upon it, or if he be absent from his usual place of residence, the acknowledgment of his principal agent, or of any person acting for him during his absence. If the defendant be resident within the jurisdiction of any other zillah or city court than that in which the suit may have been instituted, the notice shall be transmitted to the judge of the zillah or city, in which the defendant may reside, to be served in the manner above directed. If the defendant be neither resident within the jurisdiction of the zillah or city court in which the suit may be instituted, or of any other zillah or city court, and the suit shall notwithstanding be cognizable, either in claims to landed or other immovable property, from the property claimed being situated within the jurisdiction of the court, or in other cases from the cause of action having arisen within its jurisdiction, the notice, if the suit be for land or other immovable property, shall be served upon the defendant's agent or representative in charge of such property; and in other suits the judge shall cause notice of the claim to be conveyed to the defendant in such manner as may appear most certain and convenient, according to the circumstances of the case."

Notice how to be served if the defendant have no accredited agent on the spot; or if such agent decline to receive it for his constituent.

Provision in case the defendant be not resident within the jurisdiction of the court.

"*Fourth.* The notice issued under the preceding clauses of this section to weavers or others employed in the provision of the Company's investment, and to molungees and others employed in the manufacture of salt, shall be served in the manner directed by the existing regulations with respect to the service of summonses upon persons so employed, when sued as defendants in the civil courts."

Notice, how to be served upon persons employed in providing the Company's investment; or in the manufacture of salt.

§ 3. "If a defendant to whom a notice may have been issued, as directed in the preceding section, shall abscond; or is not, after diligent search, to be found; or shall shut himself up in any house or building, or retire to any place, so that the notice cannot be served upon him; the judge (or the register in causes referred to him) on receiving the Nazir's return to this effect, shall issue a proclamation, as directed in similar cases when a summons cannot be served upon a defendant, by Section 11, Regulation 4, 1793, and Section 13, Regulation 3, 1803. If the defendant shall not appear in person or by vakeel, by the time limited in such proclamation; or if a defendant, who may have been served with a notice, as directed in the preceding section, shall not appear in person or by vakeel, within the time specified; or if, having appeared, he shall refuse to answer the plaint, or make other default; the court, as provided in the sections abovementioned, shall proceed to try the cause *ex parte*; and after examining the plaintiff's evidence in support of his claim, shall give judgment, in the same manner as if the defendant had appeared, answered and entered into proof."

Section 3. Court how to proceed if the defendant, to whom a notice may have been issued, abscond; or is not to be found; or conceal himself so that the notice cannot be served upon him.

Or, if a defendant, served with the notice, shall not appear in person or by vakeel; or shall refuse to answer or make other default.

§ 4. "If a defendant, after receiving the notice prescribed in Section 2,

Section 4.  
In what cases a defendant may be required to give security for his appearance.

And under what penalty if the security required be not given.

What security bond to be executed in such instances.

And discretion to be exercised in fixing the extent of the security.

Section 5.  
In what cases malzaminy, or security for property, may be required.

And property attached if such security be not given.

In what manner the attachment to be made in such cases.

Any private alienation of the property attached declared illegal and void.

And any unauthorized removal of property during attachment, how punishable.

In what instances the attachment to be made through the collector of the district in which the land is situated.

In other cases, the attachment not to remove

shall attend in person or by vakeel, and deliver his answer to the plaintiff, and no reason shall subsequently appear to the court for requiring security for his appearance, during the trial of the suit, he shall be allowed to defend the cause, to its determination, without being called upon for such security. But if the judge (or register) shall be satisfied, by sufficient proof, that there is reason to believe the defendant intends to abscond, and withdraw himself from the jurisdiction of the court, he may, either on the institution of the suit, or at any time whilst the suit is depending in the zillah or city court, issue process against the defendant, requiring him to give security for his appearance, as prescribed on the issue of summonses, by Section 5, Regulation 4, 1793, and Section 5, Regulation 3, 1803; under penalty of being committed to close custody until such security be given, or the decree of the court be complied with; as provided in the abovementioned sections; or until an attachment of property shall have taken place, to secure the execution of the ultimate judgment in the cause, under the provision made by the following section of this regulation. The security bond, to be executed in such instances, shall in substance correspond with that prescribed by Section 3, Regulation 11, 1797, and Section 29, Regulation 3, 1803; and in fixing the extent of the security to be required, the judge (or register) is authorized to exercise the discretion vested in him by Section 2, Regulation 3, 1802; and Section 8, Regulation 14, 1803.

§ 5. "*First.* In any case, if the judge (or the register in causes referred to him) be satisfied by sufficient proof, that there is ground to apprehend the defendant means to dispose of the property in his possession by any private transfer; or to cause the public sale of any disputed land, by withholding the assessment upon it; or to remove any personal property from the jurisdiction of the court, whilst the suit against him is depending; for the purpose of avoiding the execution of an eventual judgment against him; the judge (or register) is authorized to call upon the defendant for malzaminy security, in such sum as may appear sufficient to make good the ultimate judgment of the court; and in the event of such security not being given (within a reasonable time to be allowed for that purpose) to cause the attachment of any land, effects, or other property belonging to, or possessed by, the defendant, to the amount or value of the cause of action in the suit depending; or the attachment of which may be deemed necessary to secure the execution of the judgment to be passed in the cause."

"*Second.* The attachment in such cases shall be made by a written order of the court, to be read and proclaimed upon the spot, and to be affixed in some conspicuous situation at the place where the property is situated; after which any private alienation of the property sequestered, whether by sale, gift, or otherwise, during the continuance of the attachment, shall be deemed illegal and void; and any unauthorized removal of the property so attached, during such period, with a view to oppose or evade the sequestration, shall be punishable, on proof, as an act of resistance to the process of the court; according to the provisions in force concerning resistance to the process of the civil courts. In suits for landed property of considerable value, wherein it may appear necessary, for the purposes of justice, to divest the defendant from the management of the land until the suit be decided, or malzaminy security be given, the attachment shall be made through the collector of the district in which the land is situated; as prescribed by Section 6, Regulation 5, 1798, and by clause ninth of Section 12, Regulation 4, 1803, in appealed cases, wherein neither the appellant nor respondent may be able to give security for staying the execution of the decree. But in other cases, the attachments which may be ordered under the present rule, shall not, without special cause, be recorded on the proceedings of the court, remove the defendant, or his

representative, from the possession or management of the land, or other property attached, until a decision be passed in the cause before the zillah or city court; nor be understood to preclude any act of the defendant, or his representative, relative to such property, which may be consistent with the object of the attachment."

"*Third.* Upon the decision of the suit, the judge (or register) shall pass such further order relative to the property attached as may be just and conformable with the judgment given in the cause. If the decree be against the defendant, all right and interest possessed by him in the property attached (saving arrears of rent or revenue due from land, and any other *bonâ fide* claims which may be entitled to satisfaction in preference to the decree) shall be held answerable for the execution of the judgment, in the mode prescribed by the regulations. But if the plaintiff's claim be dismissed, or be not in any considerable proportion established against the defendant, all expense and loss to the defendant, which may arise from the attachment of his property in consequence of such claim, shall be reimbursed to him by the plaintiff, as part of the costs of suit."

§ 6. "Whenever any property may be attached by order of a zillah or city court, under the provisions contained in the foregoing section, the trial of the cause shall be proceeded on, and brought to a conclusion, as speedily as possible, without regard to the order of time, with respect to other depending causes, in which it may have been instituted. The attachment shall also be taken off on the delivery of sufficient malzaminny security, at any time previous to the decision of the cause in the zillah or city court."

§ 7. "The provisions contained in the two preceding sections shall be held equally applicable to the provincial courts of appeal, and sudder dewanny adawlut, in all cases wherein an attachment of property, made by a zillah or city court, may be continued during the trial of an appeal before a provincial court, or the court of sudder dewanny adawlut; or in which those courts may judge it proper to order an attachment of property, in default of security being given, as required; either by the appellant or respondent in any depending appeal."

§ 8. "When personal bail, or security for money or other property, may be demandable from a party in any original civil suit, or appeal; and he shall tender a deposit of money, or of promissory notes, or other obligations of government, or any other sufficient money security, to the amount required; such deposit shall be accepted instead of hazirzaminny or malzaminny securities; and shall be carefully kept by the treasurer of the court; to be restored, or disposed of as the court may direct, on the termination of the cause, or whenever the purpose, for which the deposit is made, shall have been accomplished."

defendant, or his representative, from the possession or management of the land, or other property, without special cause, to be recorded. What orders to be passed, on decision of the suit relative to property attached. How far answerable for execution of decree, if against the defendant.

Section 6.  
Provision for speedy trial and decision of the suit, in cases of attachment.

Section 7.  
Preceding rules declared applicable to cases in appeal before provincial courts, or sudder dewanny adawlut.

Section 8.  
A deposit of money, or of promissory notes, or other obligations of government, or other sufficient money security, to be received when tendered, instead of hazirzaminny, or malzaminny.

<sup>1</sup> Difficulties having occurred under the construction given to existing Acts of Parliament, in the recovery of costs of suit, adjudged by the zillah, city, or provincial courts, against inhabitants of the city of Calcutta, the following special provisions were added by Section 7, Regulation 9, 1814, to the general rules which have been cited from Regulation 2, 1806. "*First.* From and after the promulgation of this regulation, every person, being a resident of the city of Calcutta, who may desire to institute or defend an original suit, or to defend an appeal in any zillah, city, or provincial court, shall be required to furnish security for all eventual costs of suit, which may be adjudged payable by such person; and shall furnish such security by a surety or sureties, residing and possessing property, without the limits of Calcutta. Such security shall be furnished by a plaintiff within six weeks of the date on which his plaint is filed; and a defendant or respondent shall furnish it within six weeks of the date on which the usual summons is served on him. Unless such security be so furnished, the suit of such person, if plaintiff, shall not be proceeded in; if defendant or respondent, he shall

Further provisions in original rules of Regulations 4, 1798, and 3, 1803.

Section 5. Defendants receiving the summons, and not giving the security required, how to be proceeded against.

R. 4, 1798, § 11, and R. 3, 1803, § 13.

Process against defendants upon whom the summons cannot be served.

In what cases the suit may be tried *ex parte*.

Summons and other process, how to be issued when the defendant is a woman of rank, who cannot appear in open court.

R. 4, 1798, § 13, extended to Benares by R. 8, 1795, § 2; and re-enacted for ceded provinces by R. 3, 1803, § 15.

It was further provided by the original rules of process contained in Regulations 5, 1793, and 3, 1803, respecting the issue of summonses on defendants in civil suits, that "the summons is to be served on the defendant by the nazir or his inferior officer, if he can be found; and in the event of his not giving the required security, the nazir or officer is to take his person into custody, and bring him before the court;" which is empowered to commit him to close custody until he shall have given the requisite security, or performed the decree which may be passed upon the complaint against him. "If a defendant, against whom a summons may issue, shall abscond, or is not, after diligent search, to be found; or shall shut himself up in any house or building, or retire to any place, so that the process cannot be served upon him," the judge, on receiving the nazir's return to this effect, is to issue a proclamation, in the Persian and Hindoostanee languages, (or in the Bengal or Oryah language in the provinces of Bengal and Orissa respectively) containing a copy of the summons; and a notice, "that if the party shall not appear on a day to be fixed (not less than fifteen days from the time of publication) the court will proceed to try and determine the cause without the appearance or answer of the defendant." This proclamation is to be fixed up in some conspicuous part of the court-room, as well as on the outer door of the defendant's usual dwelling-house, or in some public situation at his usual place of residence; and "if the defendant shall not appear at the time limited in the notice; or if a defendant who may have been served with a summons shall not appear; or if, having appeared, he shall refuse to make answer, or make other default, or admit the truth of the plaintiff's bill of complaint; the court, on examining the allegations of the plaintiff only, and the depositions of his witnesses, is to decree and give judgment, in the same manner as if the defendant had appeared, answered, and entered into proof."

The foregoing process is not applicable however to any "case, in which the defendant shall be a Hindu or Mahomedan woman, of a rank or quality which, according to the customs and usages of the country, would render it improper to compel her to appear in an open court of justice." In all such cases the judges are not to issue any compulsory process; but a summons is to be directed to the nazir of the court, containing a short account of the demand, with a notice that if the defendant shall not appear in person, or by vakeel, at the time specified, or, having so appeared, shall not answer the complaint, or make other default, the court will proceed to try and determine the cause, as if she had appeared and answered; and commanding him to deliver a copy of it to the dewan, or some principal servant of the defendant. The nazir is to return the summons, on the day appointed for the appearance of the defendant, with an endorsement specifying in what manner he has executed it, or the reason why it has not been executed. If the dewan, or other principal

not be allowed to defend his suit or appeal; but the cause shall be decided *ex parte*, on the statements and proofs of his opponent. And no appeal shall be admitted from the party who may have failed to give the required security, until he shall first have made good the whole of the costs demandable from him in the lower court. *Second.* The same rule shall be applicable, and the same mode of proceeding shall be observed, in the event of any person who may have instituted or defended any original suit, or defended an appeal in a zillah, city, or provincial court, becoming a resident of Calcutta before a decree is passed on such suit or appeal; and failing to give the required security within six weeks of its being demanded by the court; and such demand the court is hereby required to make immediately on the circumstance becoming known, even though no motion should be made to that effect. *Third.* It is however provided that nothing contained in this section shall be considered applicable to pauper suitors, coming within the provisions of Regulation 28, 1814."

servant of the defendant, shall abscond, or otherwise act so that the summons cannot be served upon him, or shall not, after diligent search, be found, the judge, upon proof on oath of the fact, is to proceed against the defendant by proclamation, in the same manner, and under the same penalty for non-appearance, or default, as directed against other defendants, upon whom the summons cannot be served.

If the defendant appear, either in person, or by vakeel, "the court is to fix a day, according to its discretion, for him to answer to the complaint; and if it shall deem it reasonable so to do, may, at any time, allow the defendant a further period for delivering his answer." If the plaintiff state his cause of action as not exceeding five or ten thousand sicca rupees, and the defendant shall, in answer, deny such statement, and allege the produce, amount, or value, to be such as to render the suit not cognizable by the zillah or city court, the judge of that court, previously to entering upon any investigation of the merits of the cause, is required to "make such inquiry as may appear necessary to ascertain whether the suit be, or be not receivable, in the zillah or city court; and to pass an order accordingly; leaving either party, who may be dissatisfied therewith, to prefer a summary appeal therefrom, to the provincial court;" whose decision is declared to be "final upon the question, whether the suit be cognizable, or not, in the zillah or city court. But no such objection to the plaintiff's statement of the cause of action shall be received from the defendant, unless offered, in the first instance, in answer to the plaint. Nor shall any appeal from the order of the zillah or city judge, in such cases, be open to the provincial court, unless preferred within one month, after the order appealed from is passed; or unless sufficient reason be assigned, to the satisfaction of the provincial court, why it was not preferred within that period."

When the defendant shall have delivered his answer to the complaint, the plaintiff is to reply to it on the next court day. He is not to introduce in his reply any matter not contained in his complaint; but is either to acknowledge the answer of the defendant to be true; or simply and shortly deny the truth of such of the facts stated in it as he intends to dispute; or of all the facts therein stated; or the competency of the answer. The defendant, whose rejoinder is to be delivered on the same day with the reply, (or, as usually allowed, on the succeeding court day,) is in like manner restricted from introducing in it any matter not contained in his answer; and is required simply to deny the truth of the reply, or of the parts of it which he means to dispute; and to aver the truth or competency of his own answer. No further pleadings are admissible; unless from mistake, inadvertence, or other cause, the plaintiff shall have omitted to insert in his complaint any thing material to the suit; or the defendant shall have omitted to insert in his answer any thing material to his defence; in either of which cases, on the omission being represented to the court, the plaintiff may be allowed to prefer a supplemental complaint, or the defendant to deliver a supplemental answer; but in modification of the original rule, contained in Section 5, of Regulation 4, 1793, it is prescribed by Section 6, of Regulation 26, 1814, that "no supplemental complaint, or other supplemental pleadings, shall be admitted in any suit, unless the court, upon a perusal of the pleadings previously filed, and from a consideration of the circumstances alleged by the parties, shall deem it just and proper to admit such supplemental plaint, or other supplemental pleadings to be filed in the suit." It is further directed in the same regulation, that "whenever a defendant in an original civil suit shall refuse, or neglect, to file a rejoinder within the period prescribed for that purpose, it shall not be necessary for the register (as hitherto required) to enter a rejoinder; but the court, before whom the trial may be depending, after recording such refusal

R. 4, 1793, § 5, extended to Benares by R. 8, 1795, § 2; and re-enacted for ceded provinces by R. 3, 1803, § 5. On defendant's appearance, a day to be fixed for his answer. R. 13, 1808, § 4, and R. 19, 1817, § 4. Judge, how to proceed, if the defendant deny that the suit is cognizable by the zillah or city court.

R. 4, 1793, § 5, extended to Benares by R. 8, 1795, § 2; and re-enacted for ceded provinces by R. 3, 1803, § 5. Reply, when to be delivered; and what to contain. Rejoinder.

In what cases supplementary pleadings may be admitted.

Restriction in Reg. 26, 1814, § 6.

Provision for default in filing rejoinder.



or neglect, shall proceed in the trial of the suit, in the same manner as if a rejoinder, containing a general denial, had been filed."

R. 4, 1793, § 6, extended to Benares by R. 8, 1795, and re-enacted or amended by R. 3, 1803, § 5. Court, how to proceed, when the rejoinder has been filed. R. 26, 1814, § 10. clause 1. Rule of proceeding to be observed, when the pleadings are completed, before any exhibits are filed, or witnesses summoned. Clause 2. Clause 3.

Clause 4.

R. 26, 1814, § 12. Further provisions respecting notice of eight days to be given before a suit is brought to hearing.

Notification how to be made.

For what cases the parties liable to be fined, and to what amount, if not prepared to file their exhibits, or name witnesses, or to furnish explanations required by the court.

"When the rejoinder has been filed, the court, either immediately, or on a fixed day, (eight days' notice of which is to be given to the parties) is to examine the truth of the complaint or claim, by the oaths of the parties if they mutually consent to that mode of examination, and of the witnesses who may be produced by them, if they have any. But it is directed in Section 10, Regulation 26, 1814, that "the prescribed pleadings shall be completed and read in open court, before any exhibits are filed, or witnesses summoned in support of the allegations of either of the parties; unless special and sufficient reason be assigned for taking the immediate deposition of a witness without waiting until the pleadings are completed and read in open court. If from the pleadings in the case, the points at issue cannot be clearly ascertained, or if from any other reason further explanations may be requisite, the court shall, on the day on which the suit may be first brought to a hearing, make such enquiries from the parties, or their pleaders, as may appear necessary, with a view to ascertain the precise object of the action, and the grounds on which it is maintained; and shall record the result on their proceedings. The court shall then consider and record the point or points to be established; and shall proceed to take the evidence which may be adduced by either party upon such points, in the manner prescribed by the rules in force. In like manner, if proof shall be required on any other points in the course of the trial, such points shall be recorded on the proceedings; and the proper party shall be called upon for the requisite evidence; and no exhibit shall be filed, or witness summoned, unless expressly declared to be in proof, or refutation, of some point, upon which the court may have directed that evidence should be taken." The following additional provisions are also contained in Section 12, Regulation 26, 1814:—"First. In order that the parties in a suit, or their authorized pleaders, may be fully prepared to file their exhibits, and to name their witnesses, as well as to furnish any explanations of the case which may be required, at the time when the suit may first be brought to a hearing, the several courts are enjoined carefully to attend to those provisions in the regulations which require that eight days previous notice be given to the parties, of the day on which the court may propose to bring the suit to a hearing. Second. For this purpose it shall be sufficient for the court to affix in some conspicuous place in the court-room, a notification, specifying the number of the suit, and the names of the parties and of the vakeels respectively entertained in the suit; together with the date on which it may be intended that such suit be brought to a hearing before the court; and such notice shall be held and considered to be in force until the suit can be brought to a hearing, either on the day fixed, or any subsequent day. Third. If either of the parties in a suit which may be brought to a hearing after due notice shall have been given in the manner above prescribed, shall not be prepared to file their exhibits, or the names of their witnesses, or to furnish any explanations of the case which may be required by the court; and shall not assign sufficient and satisfactory reason for the delay; the courts are authorized to impose upon such parties such fine as may appear just and proper; provided that the fine shall in no instance exceed one fourth of the fee paid on the institution of the suit; or of

<sup>1</sup> The rule which is here cited (and which was suggested by the author of this Analysis) is intended to prevent the time of the civil courts from being unnecessarily occupied by numerous irrelevant exhibits; and to save the attendance and examination of witnesses upon points not material to the issue of depending suit. It was founded on experience of the necessity of some efficient remedy for the evils adverted to; and has been attended with acknowledged benefit in conducting and expediting the trial of civil causes.

the amount of the stamp duty substituted for such fee. If a similar neglect shall occur a second time, after due notice shall have been given of the day fixed for the case being again brought forward, the courts are authorized to impose a second fine, under the limitation above prescribed, or to proceed as in other cases of default."

"To procure the attendance of witnesses, the zillah and city courts, on the requisition of the plaintiff or defendant, or their respective vakeels, are to issue a summons to the witnesses whom the parties may name (provided they be not Hindoo or Mahomedan women of a rank or quality which, according to the manners and customs of the country, would render it improper to compel them to appear in a court of justice) specifying at whose request the summons may have been issued, and requiring them to appear in the court on a day to be named in the summons; and there to depose concerning the matter in dispute between the parties. If a witness so summoned shall not attend on the day appointed, or attending, shall refuse to give evidence or to subscribe his deposition as hereafter required, the judge, in the first case, if it shall be proved to his satisfaction, on oath, that the witness was material to the cause, is to issue an order to the nazir to seize and bring the witness before the court, and is to impose on such witness not having attended, or refusing to give evidence, a fine not exceeding five hundred rupees, and to commit him to close custody, until he shall consent to give his evidence and sign his deposition.<sup>1</sup> If a witness who may attend pursuant to a summons, shall have incurred any expense in consequence of his being required to appear, the court is to award to him such sum for his charges as may appear to it reasonable, whether he be examined or not. If the sum so awarded shall not be paid immediately, or secured to the witness, to the satisfaction of the court, the party at whose requisition the witness may be summoned is not only to lose the benefit of his testimony, but the court, after the decree in the cause shall be passed, is to confine such party until he shall discharge the sum awarded to the witness. The zillah and city courts are to administer to parties consenting to be examined on oath, and to witnesses, such oaths as may be considered most binding on their consciences, according to their respective religious persuasions.<sup>2</sup> But if a witness shall be of a rank or cast, which,

R. 4, 1793, § 6, extended to Benares by R. 8, 1793, and re-enacted for ceded provinces by R. 3, 1803, § 7. How the attendance of witnesses is to be procured, provided they be not women of the rank or cast herein mentioned. How witnesses are to be dealt with, if they will not appear, or if they refuse to give evidence or subscribe their depositions. Court empowered to award to witnesses such sum for their expenses as may appear reasonable, to be paid by the party summoning the witness. Consequence of his not paying such expense. What oaths are to be administered to parties or witnesses.

<sup>1</sup> This rule is modified by the second clause of Section 2, Regulation 50, 1803, which directs that "witnesses attending and refusing to give evidence, whether in the civil or criminal courts, shall, in the first instance, be committed to custody only; and shall be called upon a fixed time, after such interval as may by the court be judged sufficient, (not being less than one entire day;) when, if the witness persist in his refusal to give evidence, he shall be fined in proportion to his situation in life, (not exceeding the amount limited;) and confined in the gaol of the civil court until the fine be discharged; or for such period of imprisonment as may be fixed in lieu of the fine."

<sup>2</sup> The preamble to Regulation 50, 1803, contains the following exposition of the Mahomedan and Hindoo laws relative to oaths:—"The cazee-ool-cuzat and moofftees of the court of nizamat adawlut have declared that there is no prohibition against an oath to the truth being taken by Musulmans in any case; (although it is not required by the Mahomedan law to give validity to evidence in judicial cases;) and from the report of the pundits of the court of sudder dewanny adawlut, it appears, "that the Hindoo law not only authorizes, but requires, the oaths of witnesses in civil and criminal cases; and prescribes the form in which oaths may be administered to persons of various tribes, regard being had to the importance of the matter in dispute: that no person of whatever rank is prohibited from taking an oath in a court of justice; nor is there any objection, grounded on law or usage, against administering the oaths prescribed by the law; that Bramins, rigidly observant of the duties of the priesthood, are exempted by one ancient author (Gotum) from taking an oath, and may therefore be heard as witnesses upon their simple affirmation; but that the other authorities of the law, which

Cases in which the courts may dispense with the oaths of witnesses.

according to the prejudices of the country, would render it improper to compel him to take an oath, the judge of the court may dispense with his being sworn, provided he shall subscribe one of the undermentioned declarations, according as he may be of the Mahomedan or Hindoo persuasion.'

*Declaration to be subscribed by a Hindoo witness exempted from taking an oath.*

Declaration to be signed by a Hindoo witness exempted from taking an oath.

"I will faithfully answer according to the truth such questions as may be put to me by the court in the cause now before the court; I will not declare any thing not warranted by the truth; if I declare any thing not warranted by the truth, I shall be deserving of punishment from Ishwur."

*Declaration to be signed by a Mahomedan witness exempted from taking an oath.*

Declaration to be signed by a Mahomedan witness exempted from taking an oath.

"I sincerely promise and swear in the presence of Almighty God, that I will faithfully and without partiality answer according to the truth any questions that may be put to me by the court respecting the cause now before the court." After the witness has given his deposition, he is to subscribe the following declaration: "I swear in the presence of Almighty God, that I have faithfully and without partiality answered according to the truth the questions put to me by the court respecting the cause now before the court."

Depositions of witnesses subscribing the above declarations to be received as good evidence. Depositions of witnesses to be reduced into writing. Exhibits and written evidence to be produced in open court at the trial; and if disputed to be proved by witnesses. Exhibits how to be marked and referred to in the depositions proving them.

The depositions of the witnesses who may subscribe the above declarations are to be received as good evidence in the cause, in the same manner as if they had been sworn. The deposition of every witness who may appear in court is to be taken *vivâ voce* in open court; (and if he be a native, in the Persian, Bengal, or Hindostanee language;) and is to be reduced into writing in the Bengal, Persian, or Nagree character, according as the witness may desire. The deposition is to be subscribed by the witness with his name or mark. Every exhibit or written evidence (excepting exhibits that may be proved by such absent witnesses as are hereafter mentioned) is to be produced in open court at the trial, and if disputed, is to be duly proved by the examination of witnesses sworn as above directed, whose depositions are in the same manner to be reduced into writing and signed. Every exhibit is to be marked with some letter or number to identify it, and the letter or number is to be referred to in the deposition proving it. All exhibits proved by witnesses not present in court are in the same manner to be marked and referred to in the depositions proving them, and are to be endorsed and minuted as having been read

do not contain this exemption, prevail over the single text of Gotum, and declare no dispensation in favor of any description of persons, and pronounce no form of oath sinful, excepting as far as the *Soodr* cast is restricted from handling certain idols, and that the form now in use, of swearing by water of the Ganges, and by copper and toolsey, is virtually sanctioned by many shasters; but that other prescribed forms are of equal validity; and that all oaths, made by laying the hand on any symbol or image of the deity, have the same obligation." Under this exposition it was enacted in Section 5, Regulation 50, 1803, that "should a Hindoo party or witness state objections to the usual form of swearing by water of the Ganges, copper and toolsey; and offer to take any other form of oath, which, on enquiry, may be found legal, and binding on the conscience of such party or witness, and which it may be practicable and convenient to administer to him; he shall be sworn accordingly. Provided that nothing herein shall be construed to authorize the administering of such oaths, described in the Hindoo laws, as are of the nature of ordeals; and rest the proof of facts, or the credibility of evidence, on the immediate or future contingency of evil to the person sworn, his family, and property."

Under the provision cited in the preceding note, and the exposition of the Mahomedan and Hindoo laws therein referred to, the courts of justice, civil and criminal, are required, by Section 6, Regulation 50, 1803, "to be circumspect in dispensing with the oaths of witnesses; and not to admit, on his subscription to a declaration, the evidence of any person whose rank and condition are not really such as under the existing prejudice would render it improper to compel him to take an oath."

at the time they may have been read in the court. In the event of any witness being a Hindoo or a Mahomedan woman, of a rank or quality which according to the customs and manners of the country, would render it improper to compel her to appear in a court of justice, the zillah and city courts of dewanny adawlut are authorized to commission three creditable women, who are to be sworn to execute the commission truly and faithfully, to administer either an oath, or the prescribed declaration, to persons of the rank, cast, or quality, beforementioned, (according to the discretion of the judge and the religion of the witnesses) and to examine the witnesses on written interrogatories to be delivered to them by both parties or their vakeels, if both parties shall desire to examine the witnesses. In like manner, if any witness, whose deposition may be necessary to the determination of a cause, shall reside out of the jurisdiction of the zillah or city court in which the suit may be instituted, and at a greater distance from the court than fifty coss, the judge of the zillah or city court is authorized by a letter signed by himself, and sealed with the seal of the court, to request the judge of the zillah or city court in whose jurisdiction the witness may reside, either to administer to him an oath, or cause him to sign the abovementioned declarations, should he be of the description of persons whom the courts are empowered to exempt from taking on oath, (according to the discretion of the judge who shall grant the commission, and the religion of the witness) and to examine such witness on written interrogatories to be transmitted to the judge by both parties or their vakeels, if both parties shall desire to examine the witness. The judge to whom the letter may be directed, is to examine the witness, or witnesses, named in the letter, according to the requisition of it, and to return the deposition of each witness, duly subscribed by him, to the judge of the court in which the cause may be depending, by the time required in the commission; and every deposition so taken is to be read as good evidence in the cause. But if the personal attendance of a party in a suit, or a witness (provided the party, or witness, be not a woman of a rank or quality which, according to the customs and manners of the country, would render it improper to compel her to appear before a court of justice,) who may be resident at any distance whatever beyond the limits of the jurisdiction of the court, shall be deemed by the judge trying the cause to be indispensably necessary, he is to address the judge of the court in the jurisdiction of which the person whose attendance is required may reside, requesting him to order him to attend; and the judge so addressed is directed to comply with the requisition, without further delay than may be necessary, in the event of the attendance of such person before the court of the judge to whom the application may be made being indispensable, in consequence of his being either a party or a witness in a suit depending before the court. If any exhibit or written evidence is offered to a zillah or city court in a cause depending before it, and the judge of the court shall think it just and proper to reject it, he is to endorse upon it the word "Rejected," together with the names of the parties in the cause, and the name of the party who produced the document, the date on which it may be rejected, and his reasons for not admitting it, (which may be written either upon the document rejected, or on a paper to be annexed to it) and to subscribe his name to the endorsement, and return the document, with his reasons so written, to the person who produced it."

"When the parties have been heard, the witnesses on both sides examined, and the exhibits received and considered, the judge is to give judgment, according to justice and right; and is to order costs to be paid to the party in whose favor the decree may be made;" or "to be charged to the parties respectively in such proportions as the court may deem equitable." The civil courts are directed, "to insert in their decrees all sums paid, or payable, by

Court may dispense with the personal appearance of Hindoo or Mahomedan women of a certain rank. How the evidence of such women is to be obtained.

Manner in which the judge is empowered to obtain the evidence of witnesses residing out of the jurisdiction of the court, and at a greater distance from it than fifty coss.

Personal attendance of parties or witnesses residing out of the jurisdiction of the court, and at a greater distance than fifty coss, how to be procured if necessary.

Judge how to proceed in the event of his rejecting exhibits or written evidence that may be offered.

R. 4, 1793, § 7, extended to Benares by R. 5, 1796; and re-enacted for ceded provinces by R. 3, 1803, § 9. Judgment to be given when the pleadings

and evidence have been received and considered. R. 27, 1814, § 27. Costs of suit to be inserted in decrees; and by whom payable.

the parties under the regulations, on account of fees or stamp duties, as well as on account of compensation for the expense of witnesses; and of subsistence money to peons employed in serving the processes of the courts, and of all other costs and expenses of the suit." The judges are also required to

<sup>1</sup> The following rules for regulating the payment of *Tulubannah* (subsistence or diet money) to peons or other persons not receiving a fixed monthly salary from government, for serving summonses, or other processes, of the civil and criminal courts, are enacted in the second and succeeding clauses of Section 14, Regulation 26, 1814.

"*Second.* The judges and magistrates of the several zillahs and cities shall call upon their respective nazirs for detailed lists of the peons now employed in the execution of civil and criminal processes, who do not receive a monthly salary from government; and after ascertaining what number is requisite in addition to the chuprassies on the public establishments for the service of such processes, they shall select a sufficient number of the fittest persons to be so employed; and shall cause their names to be registered with the following particulars, viz. the names of their fathers, their age and places of abode, and a concise description of their persons.

"*Third.* The nazirs are hereby strictly prohibited under pain of immediate dismissal, from employing any person not registered in the mode above prescribed, and not being an officer on the public establishment, in the service of any process civil or criminal, or in the execution of any order or official act whatever, without a special authority from the judge, or magistrate, or other public officer competent to give such directions.

"*Fourth.* The peons, who may be registered as above required, shall be furnished with an uniform belt, or such other badge of office, at the discretion of the judge, as shall suffice to distinguish them from the chuprassies on the fixed establishments. The expense of such badge shall be defrayed out of the *tulubannah* of the peon receiving the same. The judges and magistrates of the several zillah and city courts are to frame a table for regulating the account of *tulubannah* demandable on the service of process, civil and criminal, according to the rates prescribed by the regulations, or established by usage. The table shall contain a statement of the several police jurisdictions, or other more convenient local divisions, the computed distance of the central part of such local division from the sudder station, and the number of days for which *tulubannah* is to be allowed on the serving of process within each local division, calculated on the computed distance of the centre of each local division from the sudder station.

"*Fifth.* The table so framed shall be suspended for general information in the cu-cherries of the judge and magistrate, and of the collector of the district; and no *tulubannah* shall be allowed in any instance beyond the rates, or for a greater number of days, than may be prescribed in such table, without a special written order from the judge, or magistrate, the register, assistant, or other public officer competent to pass the same.

"*Sixth.* The amount of *tulubannah*, which may be demandable according to the table mentioned in the preceding clause, shall be specified on the back of each summons or other process, and the amount shall be paid by the person taking out the process, to the nazir, previously to the execution of such process: a receipt shall be endorsed on the process in each instance by the nazir, specifying the amount, and the person from whom it was received.

"*Seventh.* When two or more processes may be served by one peon, the judge and magistrate, or other officer, who may order the same to be served, shall determine in what proportions the fixed rates of *tulubannah* shall be paid by the parties respectively; and shall sign an order to that effect on the face or back of the process.

"*Eighth.* When the process shall have been executed and returned according to the preceding rules, the nazir shall pay to the peon, who may have served the same, three-fourths of the amount of the *tulubannah* received by him on account of such process; and the nazir shall be entitled to appropriate the remaining one-fourth of the *tulubannah* to his own use.

"*Ninth.* The judges and magistrates, the registers and assistants, are required to take every possible precaution, and to give all practicable attention, for the purpose of preventing illegal or undue exactions of diet or subsistence money under the name or pretence of *tulubannah*."

insert in their decrees "the names of the witnesses whose depositions may have been taken; the title of every exhibit read in the cause; and the amount of the annual produce of the land, or the sum of money, or the value of the property or thing, decreed." The decree is to be sealed with the seal of the court, signed by the judge, and dated on the day when it may be passed."

By Section 26, Regulation 4, 1793, and Section 27, Regulation 3, 1803, the judges were further instructed, within ten days after passing a decree, "to deliver in tender in open court, to each party, or their vakeels, a true copy of the decree, authenticated as above directed;" but the preparation of copies of decrees, for the use of parties in civil suits, is now suspended until the party desiring a copy shall, in compliance with the eighth clause of Section 8, Regulation 26, 1814, "furnish to the court, by whom the decision may have been passed, one, two, or more sheets or rolls of the stamp paper prescribed in Section 19, Regulation 1, 1814, as may be necessary for transcribing the decree." Section 15 of Regulation 26, 1814, has likewise modified the rules before in force for the execution of decrees, viz. Section 7, Regulation 4, 1793, and Section 9, Regulation 3, 1803; which, without any express application from the party, in whose favor a decree might be passed, directed that the court, in cases not appealed, should "cause the decree to be executed; if it be for a zemindary, independent or dependent talook, or other estate or real property, by causing possession of the property to be delivered to the person to whom it may be decreed; if it be for personal property, or a sum of money, by causing the specific thing to be delivered, or the value of it; or the sum of money decreed, to be levied by the public sale by auction of a sufficient portion; or if requisite for the satisfaction of the decree, the whole of the lands, houses, and all effects, either real or personal, belonging to the party against whom the judgment may have been given; or by the attachment of his person; or where it may be necessary, both by the sale of his property and effects; and the attachment of his person." The provisions contained in Section 15, Regulation 26, 1814, for the guidance of the whole of the civil courts, in the execution of decrees, are as follows:

"*First.* Such parts of the regulations as are construed to require, that the decrees passed in civil suits shall be executed and enforced by the courts without any application for that purpose from the parties, are hereby declared subject to the following modifications. *Second.* Decisions passed by moonsiffs in all suits cognizable by them either previously or subsequently to the 1st of February, 1815, shall be executed in the manner prescribed by Section 45, Regulation 23, 1814. *Third.* Decrees which may have been passed by the zillah or city courts, the provincial courts, or the sudder dewanny adawlut, on regular suits or appeals, previously to the promulgation of this regulation, shall be executed by those courts according to the provisions of the regulations heretofore in force, and in the same manner as they have hitherto been enforced. *Fourth.* The zillah and city courts, the provincial courts, and the sudder dewanny adawlut, shall not be required to carry into execution any decree, which may be passed in original suits, or in appeals, subsequently to the 1st of February, 1815, except in conformity with the following rules and provisions. *Fifth.* Any party who may be desirous of obtaining the execution of a decree passed subsequently to the 1st of

R. 4, 1793, § 26 extended to Benares by R. 8, 1795; and re-enacted for ceded provinces by R. 3, 1803, § 27. Further particulars to be noticed in decrees.

R. 4, 1793, § 26, extended to Benares by R. 8, 1795; and re-enacted for ceded provinces by R. 3, 1803, § 27. Rule for tender of copies of decrees within ten days.

Modified by R. 26, 1814, § 8; which requires parties to furnish the stamp paper prescribed for copies of decrees.

R. 4, 1793, § 7, extended to Benares by R. 8, 1795; and re-enacted for ceded provinces by R. 3, 1803, § 9. Rule for execution of decrees.

R. 26, 1814, § 15. Former rules for execution of decrees, without application of parties, subject to following modifications.

Under what rules decrees, of moonsiffs to be enforced. Decrees previous to promulgation of this regulation to be executed under rules heretofore in force.

Courts, how to execute decrees passed subsequently to 1st February, 1815.

Parties to present a petition to the court.

<sup>1</sup> By a circular order from the sudder dewanny adawlut, under date the 27th April, 1796, if any objection shall have been made by the defendant to the plaintiff's statement of the cause of action; the determination passed thereupon, declaring the ascertained produce, amount, or value, of the property in litigation, is also to be stated in the decree.

February, 1815, shall appear, either in person or by an authorized pleader, before the court by whom such decree may have been passed, or if the decree shall have been passed by a sudder ameen, before the zillah or city judge, and shall present a petition written on the stamp paper prescribed in Section 18, Regulation 1, 1814, praying for the execution of the decree.

*Sixth.* The petition shall state the number of the suit, the names of the parties, the date and substance of the decree, whether any appeal has been preferred or admitted from the decision, and whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree; it shall further contain a statement of the specific amount due to the petitioner under the decree, whether on account of costs of suit, or otherwise, and the name of the individual, or individuals, against whom the enforcement of the decree is solicited.

*Seventh.* The court, after causing the purport of the petition to be compared with the decree contained in the original record of the suit, shall proceed to execute the same in conformity with the provisions which are now in force, or which may be hereafter enacted.

*Eighth.* Provided however, that if the suit shall have been tried *ex parte*, or that an interval of more than one year shall have elapsed between the date of the decree and the application for its execution; or that the enforcement of the decree shall be solicited against individuals being heirs or representatives of the original parties in the suit, or against one only of several individuals equally affected by the decree; or if there shall appear reason to believe that the matter in dispute has been adjusted by the parties subsequently to the decree, either by the voluntary surrender of the thing adjudged, or by the payment of the sum decreed either in whole or in part, by *kistbundee* or otherwise; it shall be competent to the court, instead of proceeding to the immediate enforcement of the decree, to issue a notice to the party against whom execution may be sued out, requiring him to show cause, within a limited period to be fixed by the court, why the decree should not be executed against him. If upon such notice the party shall not attend in person or by *vakeel*, or shall not shew sufficient cause to the satisfaction of the court why the decree should not be forthwith executed, the court will cause the judgment to be satisfied according to the rules in force. If the party shall attend in person or by *vakeel*, and shall offer any objection to the enforcement of the decree, the court shall issue such order, after a due consideration of the circumstances of each case, as may appear just and proper.

*Ninth.* The preceding rules shall not be construed to prevent the courts from issuing process of execution, for the purpose of recovering any fees or costs which may be due to government, or any fees due to *vakeels* by a party in a suit, whether decided before or after the 1st of February, 1815. In such cases, as well as in suits, in which a party may have been allowed to plead in *formâ pauperis*, the courts shall proceed, without any application from the parties, to enforce execution of the judgment so far as relates to the recovery of the amount of fees, or costs, due to government, or to pleaders in the suit."

What the petition is to contain:

Court, how to proceed in the execution of the decree.

In certain cases specified, the courts to make previous enquiries and to pass such orders as may appear just and proper, with regard to the execution of decrees.

Provisions for recovering costs due to government and *vakeels' fees*, and for executing decrees in pauper suits.

Special provisions in R. 16, 1812, for authorizing the judge of the 24 *pergunnahs* to execute judgments of the court of requests for the town of Calcutta.

The following special provisions contained in Regulation 16, 1812, "for authorizing the judge of the *dewanny adawlut* of the zillah of the twenty-four *pergunnahs*, to execute judgments passed by the court of requests for the town of Calcutta," may be added in this place:—

"*First.* If the defendant in any suit decided by the court of requests for the town of Calcutta, the plaintiff in which shall have obtained a judgment, shall retire before execution of the same, into the jurisdiction of the judge of the zillah of the twenty-four *pergunnahs*, the judge of the said court, upon receiving a written application from the said plaintiff, either in person or by *vakeel*, setting forth the above circumstances, and accompanied by a copy of

the judgment, duly authenticated, is hereby authorized and directed to proceed to execute the said judgment in the mode prescribed by the existing regulations for executing his own decrees. *Second.* Provided always, that if the defendant in such case shall allege any cause against the execution of the judgment which shall appear to the judge to require the determination of the commissioners of the court of requests, the judge shall, upon such defendant entering into sufficient security to satisfy the judgment, if the judge should deem this precaution necessary, allow the said defendant a reasonable period to apply to the said commissioners; upon the expiration of which, unless the said defendant should produce an order properly authenticated from the said commissioners, certifying that the judgment ought not to be put into execution, the judge shall forthwith proceed to execute the judgment as prescribed in the preceding clause. *Third.* Provided further, that no defendant who shall have been confined in the jail of the said commissioners, and shall have been liberated under the rules established for the guidance of the said commissioners by the Governor General in Council on the 11th February, 1805, in consequence of having received diet money for a given period, shall again be confined by the judge of the zillah of the twenty-four pergunnahs in execution of the same judgment; but that in all such cases execution shall proceed against the property only of the defendant."

If the defendant be committed to close custody, at the instance of the plaintiff, either whilst the suit is depending, or after the decree shall have been passed, the judge, at the time of committing the defendant, is to "make an order on the plaintiff for the payment of whatever monthly allowance he may think reasonable for the subsistence of the defendant, upon a consideration of his rank and situation in life, and the circumstances of the plaintiff;" not exceeding four annas, nor being less than one anna per diem. The payment is to be made monthly, in advance, to the nazir of the court; viz. the first payment immediately upon the confinement of the defendant, and any subsequent payment that may become due, at the expiration of the current and each succeeding month, calculating from the day on which the defendant may have been confined. If the plaintiff shall neglect or refuse to pay the prescribed allowance, for one month after it may become due; the judge, upon the nazir's report in writing to this effect, is to notify, by a publication in the Persian and Hindoostanee languages, (or the Bengal language in the province of Bengal,) to be fixed up in some conspicuous part of the court room, that if the plaintiff shall not, within a month after the date of the notice, pay the sum in arrear, with the allowance for one month in advance, the court will release the defendant: and he is to be discharged accordingly, if the plaintiff shall not make the payments required by such notice. This rule is not applicable to defendants "who may be committed to custody for disobedience to an order of the court;" the allowance to them being paid by government. But the spirit of it must be considered to include plaintiffs, whose claims may be dismissed with costs; and who may be confined for the recovery of the latter, at the instance of the defendants entitled thereto.\*

\* This is the evident intention of the rule referred to; though, from a verbal inaccuracy, it has been doubted whether the second monthly payment be demandable at the expiration of the first, or of the second month.

† In cases before the sudder dewanny adawlut on the 4th January, 1798, and 28th February, 1799, the court also considered Section 8, Regulation 4, 1793, applicable to plaintiffs admitted to sue as paupers; when the defendants sued by them may be confined at their instance; the regulations not containing any exception, with respect to paupers, on this point.

R 4, 1793, § 8, extended to Benares by R. 6, 1795, and re-enacted for ceded provinces by R 3, 1803, § 10. Allowance to be made by plaintiffs for subsistence of defendants, when confined at their instance.

Judge how to proceed in case of neglect or refusal.

This rule not applicable to defendants confined for disobedience. But the spirit of it includes plaintiffs confined at the instance of defendants.



R. 2, 1806, § 12.  
Subsistence money paid to prisoners under the rule above cited, in what cases to be recovered from them, on their discharge.

A question having arisen, whether the amount paid; in pursuance of the rule above cited, for the subsistence of persons in confinement under judgments of the civil courts, is to be repaid by the party confined, on his release; it was explained by Section 12, Regulation 2, 1806, "that such repayment is to be made, in common with the reimbursement of other costs of suit and process, when any property may be forthcoming from which the amount can be levied. But when no property can be pointed out for the reimbursement of the subsistence money paid to prisoners, they shall not be detained in confinement for the repayment of such money only." The following provisions were also enacted in Sections 10 and 11 of the same Regulation.

R. 2, 1806, § 10.  
In what cases the civil courts are competent to provide for the payment of money adjudged, by instalments. Restriction, when there may be property liable to satisfy the judgment.

§ 10. Doubts having been entertained whether any of the established civil courts are competent to provide, in their decrees, for the payment, by instalments, of money adjudged by them, or to make such provision, in cases of indigence, at any period after passing their decrees; it is hereby declared, that the civil courts in general are restricted from granting indulgence of time, in the satisfaction of a final judgment, when property, from which such judgment can be satisfied, (whether belonging to the party against whom the judgment is given, or to his surety or sureties for the performance of such judgment,) may be forthcoming; unless the party in whose favor the decree is passed, shall consent to waive his right of immediate enforcement, under an engagement for gradual payment, or otherwise; or unless a short postponement of the sale of property shall, under any particular circumstances, appear just and equitable. But when no property may be pointed out from which the judgment can be enforced, and the party against whom it is passed, or his surety, if he have given any, may be willing to engage (under sufficient malzami or hazirzami security, as one or the other may be tendered or required) for the liquidation of the amount due, by instalments, within such period, as the court passing the final decree, or intrusted with the execution of it, shall deem reasonable and proper; it shall be competent to the court, by which the final judgment is given, or to a zillah or city court enforcing the decision of a native commissioner, and to any superior court revising the proceedings of an inferior court, to accept the engagement so offered, and to cause execution of the decree in conformity therewith, so long as the conditions of it shall be duly fulfilled. In such cases, if the person delivering the accepted engagement shall have been taken into custody, he shall be immediately discharged; and shall not be liable to further arrest in execution of the judgment to which such engagement may refer, except on failure to perform the terms of it; nor shall any interest be chargeable in such instances beyond what may be provided for in the engagement.

R. 2, 1806, § 11.  
Provision for the relief of insolvent debtors confined under decrees of the civil courts.

§ 11. "For the relief of insolvent debtors and their sureties, who may be in confinement for the satisfaction of decrees of the civil courts, and may have no means of discharging the amount demandable from them, by instalments or otherwise, the judges of the zillah and city courts, the provincial courts of appeal, and the court of sudder dewanny adawlut, are further empowered, on receiving from the person, or persons confined, in such cases, a statement upon oath, containing a full and fair disclosure of all property belonging to them, whether in land, money, or effects, or of whatever description; and whether held in their own names, or in the names of any other persons, or jointly with others; to cause inquiry to be made for the purpose of ascertaining the truth of such statement, or the validity of any objections thereto, which may be offered by the party at whose instance the prisoner, or prisoners may be in confinement; and if the result of such inquiry shall satisfy the court that the statement of property so delivered is true and faithful, and that the persons confined possess no other means of discharging the amount demandable from them, and the property included in the statement, or such part

thereof as the court may deem it proper to sell, in satisfaction of the judgment passed, shall be given up for sale; the court, on receiving such surrender of property, may cause it to be sold, in the mode prescribed by the regulations; and may order the release of the person or persons in confinement, either with or without hazirzamin security, for his or their appearance when required. Provided, however, that nothing in this section, which is meant to grant relief in cases of real inability and fair dealing only, shall entitle any debtor or surety, confined under the judgment of a civil court, to be released, without full satisfaction of such judgment, if he shall be guilty of any fraudulent concealment of property; or shall have committed any manifest fraud or misdemeanor, which may appear to the court to render him an improper object of the relief intended for persons acting with good faith; and willing to surrender all the property in their possession for the benefit of their creditors. Nor shall release from confinement, in any instance under this section, prevent the creditor from bringing to sale (by application to the court) in full payment of the sum adjudged due to him, any property which may be subsequently possessed by the party released; or from causing such party to be again confined until the judgment be fully satisfied, when it may appear, by sufficient proof, that he had fraudulently concealed any property actually belonging to, and known to have been possessed by him, either in his own name, or that of others in his behalf, at the time of his discharge. Provided further, that all proceedings held and orders passed, by the judges of the zillah and city courts, under the discretion vested in them by this section, shall, on representation of the parties affected thereby to the provincial courts of appeal, be open to the revision and determination of those courts; and in like manner, all orders passed by the provincial courts under this section shall be open to the final decision of the sudder dewanny adawlut."

As connected with the execution of decrees and orders of the civil courts by the confinement of parties in the jails attached to those courts, it may further be noticed in this place that, by Section 2, Regulation 4, 1816, the courts of civil judicature are authorized to "receive petitions upon unstamped paper from prisoners who may be in actual confinement, under a decree of court, or under any judicial process, civil or criminal, if the court to which the petition may be presented, shall be satisfied, by the oath of the party, or otherwise, that he is unable to pay the prescribed stamp duty, for the purpose of delivering such petition upon stamped paper; or without any oath, or proof to this effect, if the petition shall relate to any ill treatment alleged to have been sustained by the prisoner, during his confinement, from an officer of the jail or other person."

Sections 3 and 4 of the same regulation contain also the following rules:—

§ 3. "The judges of the zillah and city courts shall visit the civil jails at their respective stations once in every week; and shall redress all well-founded complaints of ill-treatment which may be preferred to them, by the prisoners against the jailer or other person having charge of them. They shall also be attentive at all times to the health and cleanliness of the prisoners; and be careful that the surgeons at their respective stations, attend and administer to the sick in the civil jail, in like manner as they are required to attend the criminal jail."

§ 4. "The judges of the courts of circuit, who are directed to visit the criminal jails of the zillahs and cities at the periodical jail deliveries, and to issue to the magistrates such orders as may appear to them advisable for the better treatment and accommodation of the prisoners, shall, in their capacity of judges of the provincial courts, likewise visit the civil jails at each station; and are empowered to issue to the judges such instructions, being consistent with the general regulations, as may appear requisite for the better treatment and accommodation of the prisoners in their jails; or for enquiring into, and

Restriction of intended relief to cases of real inability and fair dealing.

Release of debtors, under this regulation, not to prevent the sale of any property subsequently possessed by them, in full payment of sums adjudged against them. Or their being again confined, in cases of fraudulent concealment of property. Proceedings and orders of zillah courts open to revision of the provincial courts. And orders of provincial courts open to final decision of the sudder dewanny adawlut.

R. 4, 1816, § 2. Courts of civil judicature empowered, in certain cases, to receive petitions on unstamped paper from persons in confinement under a decree of court, or under any judicial process, civil or criminal. Section 3. Judges of the zillah and city courts to visit their civil jails weekly, and redress ill-treatment of prisoners. Also to attend to health and cleanliness of the prisoners.

Section 4. Judges of circuit to visit the civil jails at the periodical jail deliveries, and empowered to issue instructions for the better treatment and accommodation

of the prisoners.

redressing, if established, any alleged grievance, or undue restraint, during their imprisonment."

R. 45, 1793, re-enacted for Benares, with an additional section, by R. 20, 1795; and for ceded provinces by R. 26, 1803; with amendments contained in Regulations 5, and 12, 1796; 7, 1799; and 1, 1801.

Sales of land in execution of judicial process, how to be made.

When portions of estates are ordered to be sold in satisfaction of decrees of the courts of judicature, it is necessary, for the security of the public revenue, that a distribution of the assessment upon the entire estate be adjusted for the portion brought to sale. The board of revenue at the presidency, and the boards of commissioners appointed to superintend the revenues of the upper provinces, and Benares, with the collectors acting under them, being in possession of the accounts required for the adjustment of the assessment in such cases; and moreover, as the details of attachments and sales of land would occupy much of the time of the courts, and often occasion delay in the enforcement of decrees; it is provided, by the regulations noted in the margin, and by those subsequently enacted for transferring parts of the original jurisdiction of the board of revenue at Calcutta to the boards of commissioners established in the upper provinces and Benares, that all sales of land, in execution of judicial process, shall be made by the board of revenue at the presidency, (or by the boards of commissioners abovementioned); or under their orders, by the collector of the zillah in which the lands are situated. For this purpose, it is directed that whenever there may be occasion to have recourse to a sale of lands, in satisfaction of a decree, the court by which the decree is to be enforced, shall transmit a copy and translation of it, without any other part of the proceedings, to the board of revenue (or to the local board of commissioners) who are to proceed with all practicable dispatch to dispose of such portion of the lands of the party against whom the decree is given, as may be sufficient to make good the amount of it. The court by which the decree is passed, or to which the enforcement of it is committed, may however, at any time before the actual sale, countermand or postpone it, upon sufficient cause, by a precept to the collector by whom the lands may have been ordered to be sold; or by an address to the board of revenue, or board of commissioners, if the sale shall have been directed to take place under their immediate superintendence. The precept, or address, in such cases, is to state the reasons of the court for ordering the sale to be countermanded or postponed; and in the latter case, if it appear proper, the court may prescribe another date for the sale.<sup>1</sup>

By whom the sale may be countermanded, or postponed, in such cases.

R. 4, 1793, § 9.  
R. 6, 1795, § 4.  
R. 65, 1795, § 3 and 4.  
R. 3, 1803, § 11.  
R. 31, 1803, § 40. R. 36, 1803, § 43.  
Copies of all decrees affecting land, to be sent to board of revenue, or board of commissioners, in the upper provinces and Benares; as well as to the collector of the district.  
R. 2, 1805, § 9.  
And in public suits a copy and translation to be sent to Governor General in Council.

The judges of the zillah and city courts are further required, by the regulations noticed in the margin, to transmit to the collectors, and board of revenue, (or board of commissioners in the upper provinces and Benares) copies of all decrees which may be passed by them, or which may be sent to them for enforcement, affecting the proprietary right to, or possession of, any lands paying revenue to government, or held exempt from the payment of revenue; for the purpose of making the requisite entries and alterations in the periodical public registers of land. If the decree be for malgoozary land, the copy of it is to be accompanied with "a short abstract of it, specifying the date of the decree, the names of the pergunnah or pergunnahs, the talook or talooks, the turf or turfs, the village or villages, or the portions of each which may be decreed, the name or names of the person or persons last in possession, the person or persons to whom the lands may be decreed, and if the land be decreed to two or more persons, the shares awarded to each person." And in all suits wherein government may be one of the parties, the court passing a judgment, whether for or against government, is directed, by regulation 2, 1805, to transmit a copy and translation of the decree, as soon as the same

<sup>1</sup> See a further statement of provisions in the regulations, which respect the public sale of lands in execution of decrees of the courts of judicature—vol. ii. of this Analysis, Note to page 416.

can be prepared, to the secretary in the judicial department, for the information of the Governor General in Council.

In addition to the foregoing general rules for the guidance of the zillah and city courts, in receiving, trying, and deciding the suits cognizable by them, and in carrying into execution the decisions passed by them, many subsidiary rules have been prescribed; of which the most important is that for preserving to the natives their own laws and usages, in certain cases; as already quoted from the judicial plan of 1772, and continued in the existing regulations, in the following terms: "In suits regarding succession, inheritance, marriage, and cast, and all religious usages and institutions, the Mahomedan laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos, are to be considered the general rules by which the judges are to form their decisions." In Section 3, Regulation 8, 1795, for the province of Benares, it is added, that "in cases in which the plaintiff shall be of a different religious persuasion from the defendant, the decision is to be regulated by the law of the religion of the latter; excepting where Europeans, or other persons not being either Mahomedans or Hindoos, shall be defendants; in which cases the law of the plaintiff is to be made the rule of decision in all complaints and actions of a civil nature." The Mahomedan and Hindoo law officers, attached to the several civil courts, are required to expound the law of their respective persuasions; and the judges are directed to be guided by their exposition, in all cases wherein they may have no reason to doubt the accuracy of it; but if, in any case, they entertain such doubt, either from objections of the parties, founded on other law opinions exhibited by them; or from a reference to the known books of Mahomedan or Hindoo law; or, from whatever cause, if the court trying the suit consider the exposition given by its immediate law officer insufficient; it is declared at liberty to obtain a further exposition from the law officers of the superior courts by a reference of the case to them, through the judges of those courts. But no point of law is to be referred to individuals not acting in a public capacity; and to whom consequently no responsibility attaches; although law opinions, quoting or referring to authorities, may be received from parties, in support of their claims; and, if it be deemed proper by the courts receiving them, referred to their law officers or to those of the superior courts. Upon the wise, just, and humane principle, which dictated these provisions, it will be sufficient to observe, that the translations of books of law, Hindoo and Mahomedan, made under the encouragement of the British Government, have materially contributed to give effect to it, by enabling the judges of the civil courts to inform themselves upon general points of Mahomedan and Hindoo law, and to investigate the expositions of the native law officers attached to their respective courts. This salutary examination and control, it may be expected, will become still more efficient, under the means now afforded by the College of Fort William, to study the Sanscrit and Arabic languages, and to obtain a more perfect knowledge of the laws from original authorities.<sup>1</sup>

A further provision, that "the zillah and city courts are not to pass a decree in any suit concerning the succession or right of inheritance to a zemindary, talook, land, house, or other real property, to which there are more claimants than one, who, by the Hindoo or Mahomedan law (respect being had to the religion of the claimants) would be entitled to a portion of the property; excepting the property be, by the decree, adjudged to all the

Rule for preserving to the natives their own laws and usages, in suits regarding succession, inheritance, marriage, cast, and all religious institutions.

R. 4, 1793, § 15, re-enacted for Benares, with addition, by R. 8, 1795, § 3; and for ceded provinces by R. 3, 1803, § 16.

R. 2, 1798, § 4, re-enacted, in part, for ceded provinces, by first clause of § 16, R. 3, 1803. By whom the Mahomedan and Hindoo laws are to be expounded.

Translations of books of law have contributed to give effect to these provisions.

And further means of controlling the law officers may be expected from the studies of the College of Fort William.

R. 3, 1793, § 13; extended to Benares by R. 7, 1795, § 2; and re-enacted for ceded provinces by R. 2, 1803, § 10. Application of

<sup>1</sup> Foreign laws and customs, not being Hindoo or Mahomedan, are ascertainable, as in England, by evidence: and the advocate general recommended this mode of ascertaining them in a case referred for his opinion, by the sudder dewanny adawlat, in February, 1799.

preceding rule directed, in suits concerning the succession, or right of inheritance, to landed property.

Proclamation usual in such cases.

Spirit of the rule, for observing Mahomedan and Hindoo laws, declared applicable to cases of slavery.

claimants, in the proportions to which they may be respectively entitled ;” is rather a particular application of the preceding general rule, than a new rule ; but, with a view to give it the fullest effect, the term “ claimants” is construed to include all persons legally entitled to claim a share of the property in dispute, as well as the actual claimants in the cause before the court ; and previously to giving judgment in the suits described, it is usual to issue a proclamation, requiring all persons, entitled to any portion of the litigated property, to notify their right and claim thereto, within a limited period ; that the same may be included in the court’s decree ; or their right, if disputed, reserved for investigation by a separate suit. It may be useful to add, that on a reference to the sudden dewanny adawlut in the year 1798, the court were of opinion that the spirit of the rule, for observing the Mahomedan and Hindoo laws, was applicable to cases of slavery ; though not included in the letter of it ; and this construction was confirmed by the Governor General in Council, under date the 12th April 1798.<sup>1</sup> It is observable,

<sup>1</sup> For the Mahomedan and Hindoo laws of slavery, consult the translations of the *Hedaya* and Hindoo Digest. Also Sir W. Jones’ versions of *Menu*, and *Al Sirajiyah* ; and an official paper on the subject, written by Mr. H. Colebrooke, which is cited at length in the third volume of this Analysis, p. 743, and Sequel. In page 761 of that volume it was noticed, that the court of nizamat adawlut “ had under their consideration the draught of a regulation proposed by Mr. J. Richardson, judge and magistrate of Bundelcund, for checking and reforming the abuses that have crept into practice, and at present exist with respect to slavery. In the month of November, 1818, the author of this work, in his capacity of chief judge of the court above-mentioned, transmitted to the court, (being then absent from the presidency,) a minute containing his sentiments upon the regulation proposed by Mr. Richardson, with the draught of a regulation suggested by himself, for the guidance of the courts of judicature in cases of slavery. His return to England in the month of January following, before the regulation proposed by him had received the consideration of the other judges of the court, prevented his knowing the result, either of the deliberations of the nizamat adawlut, or of the determination of the Governor General in Council, on this interesting and important subject. But he is induced to give publicity to the minute referred to, in this place, as well in justice to the humane views of Mr. Richardson, as for the purpose of submitting his own opinion, how far the Mosulman and Hindoo laws of slavery admit of modification, consistently with a due observance of those principles of government which have been wisely prescribed, and prudently maintained, for the safe and beneficial administration of British India, in all matters connected with the established customs and habits of the people.

“ The court have long had before them the draught of a regulation proposed by Mr. Richardson, judge and magistrate of the district of Bundelcund, and entitled, ‘ A Regulation for checking and reforming the abuses that have crept into practice, and at present exist, with respect to slavery, within the British dominions, subordinate to the presidency and government of Fort William.’ Copies of the regulations, and of Mr. Richardson’s letters, dated 23d March, 1808, and 24th June, 1809, were submitted to Government, with some other papers on the subject, in January, 1816 ; and the court, at the same time, intimated their intention of preparing and transmitting the draught of a regulation concerning slavery, at a future period. Other exigent duties have hitherto prevented this intention from being carried into effect. But I have availed myself of the leisure afforded by the late vacation, to prepare the draught of a regulation ‘ for the guidance of the courts of judicature in cases of slavery,’ which I now lay before the court ; and propose that a copy of it be submitted for the consideration of His Excellency the Governor General in Council, with a copy of this minute ; and the sentiments of the other judges, who may have time to consider the subject, without interrupting the sittings of the civil court.”

“ Mr. Richardson, in his original letter, of the 23d March, 1808, after forcibly stating the evils of slavery, and contrasting this condition with that of voluntary servitude, offered the following suggestion. “ Aware of the great importance, and convinced of the caution with which innovations should be attempted ; or the ancient laws, customs, or prejudices, of a people infringed ; I presume not even to sketch out the mode,

that the rule in question is not so extensive as the act of parliament, which defines the jurisdiction of the supreme court over the native inhabitants of

Remark on difference between this rule, and the act of Parliament, which defines the

or to fix the period, of general emancipation; and perhaps the sudden manumission of those now actually in a state of bondage, though abstractedly just, might be politically unwise. But there can exist no good reason, either political or humane, against the British Government's prohibiting the purchase or sale of all slaves, legitimate or illegitimate, after a specified time; and likewise ordaining and declaring that all children, male and female, born of parents in a state of slavery, shall, from a like date, be free." On the 29th March, 1809, he was furnished with copies of the questions put to the Mosulman and Hindoo law officers of this court, on the 23d March, 1808, and of the answers received from them; with instructions, if, under the information contained in those papers, any further provisions, or modifications of the existing laws of slavery, should appear to him requisite, to prepare the draught of a regulation, in conformity with the rules contained in Regulation 1, 1803. Mr. Richardson's letter, in reply, dated the 24th June, 1809, after stating his sentiments on the expositions of the Mahomedan and Hindoo laws, which had been communicated to him, and giving his reasons for setting aside the Hindoo law of slavery, as supposed to have been long dormant under the Mosulman Government, and allowing operation only to the strict provisions of the Mahomedan law, as the established system enforced by our criminal courts, not only in cases affecting personal freedom, but even in such as extend to life and death, concludes as follows: "I am still of opinion that great alterations are indispensable in the application of the law, and in the practice with regard to slaves throughout the dominions dependent on the Bengal Government, whether we consider the question either a measure of justice, and policy; or as spreading wider the blessings of personal freedom, and increasing the stock of human happiness. On the above considerations, I solicit, and rely upon the aid of the court of nizamut adawlut to supply my deficiencies, to promote so great a purpose, as that of liberating a great portion of our fellow creatures from bondage, and preventing slavery throughout the British dominions in future."

"The regulation submitted with the above-mentioned letter does not, however, propose the formal abolition of slavery. It assumes, in the preamble, that "no reason exists why the state of slavery throughout the British possessions, should not be determined by the Mahomedan law; the British Government having acquired the right of legislation from a Mosulman power, in previous possession of these territories for centuries; and having adopted the Mahomedan laws, particularly in all criminal cases, and indeed in all judicial cases, except those of heirship, marriage, cast, or matters connected with religion;" and on this basis proposes the enactment of rules, the principal of which are, in substance, as follows: *First*, That all claims and disputes respecting slavery be made cognizable by the magistrates. *Secondly*, That the Mahomedan law, as expounded by the Mosulman law officers of the sudder dewanny and nizamut adawlut, be made the standard for regulating the magistrate's decision, in all claims and disputes respecting slavery, whether the claimant be a Mosulman or Hindoo. *Thirdly*, That when the claimant, and also the person claimed as a slave, are not Mahomedans, the claim be dismissed, and the alleged slave declared free. *Fourthly*, That a similar judgment be given, when the claimant may be a Mahomedan, and the person claimed as a slave is not a Mahomedan; unless the former's right of property over the latter be proved according to the letter and spirit of the Mahomedan law. *Fifthly*, That the sale of children as slaves, whether by their parents, or others, be prevented; and that measures be adopted, through the police officers, for rendering this prohibition effectual. Also, that the theft and fraudulent sale of children, by persons not their parents, as well as the purchase of such children, knowing them to have been stolen, be declared punishable by the courts of circuit. Parents selling their children, and the purchasers of such children, to be likewise subject to a fine, equal to the price given for the child in each instance. *Sixthly*, Proclamations to be issued by the magistrates half-yearly for five years, and afterwards annually, notifying the rules enacted respecting slavery, and inviting all persons detained wrongfully in bondage, contrary to the letter and spirit of the Mahomedan law, to apply to the local magistrate for emancipation. Any forcible means or severities, practised by claimants to slaves, for the prevention of such applications, to be punishable by fine or imprisonment. *Seventhly*, The decisions of the magistrates, under the proposed regulations, to be open to revision in all cases of a written application for that purpose, by the

jurisdiction of the supreme court, over the native inhabitants of Calcutta. 21 Geo. III, cap. 70. § 17.

Calcutta, with respect to "all matters of contract and dealing between party and party;" and considering the very comprehensive nature of this general

judge of circuit, holding the zillah or city jail delivery, or by the court of circuit at the sudder station of the division.

On considering the regulation proposed by Mr. Richardson, I entirely concur in his first proposition, that all claims and disputes respecting slavery should be made cognizable by the magistrates in the first instance, subject to the established control of the courts of circuit. The process of the civil court is too slow for investigating and determining cases of this nature; which moreover, as involving the right of personal freedom, may be considered, in that respect, within the proper jurisdiction of the criminal courts. The following extract of a letter from the acting magistrate of Zillah Furruckabad, under date the 17th February, 1817, (which induced the nizamat adawlut to sanction a summary enquiry by the magistrate, subsidiary to a regular suit in the civil court,) may be cited, as forcibly applicable to this point. "Seeing that years may elapse before the cause can be tried and decided; that the owner is deprived of his slave's services in the meanwhile; that he continues to feed and clothe him; that the refractoriness of his slave may have subjected him to the costs and expenses of a civil suit, which the slave can never re-imburse him; that slaves are possessed of and can acquire no property to enable them to institute or defend a suit; that such slave, it may be, is kept in actual confinement, or continues subject to such degree of restraint as his bail may think necessary to impose upon him; ought not all suits of this nature to be preferred and tried as summary ones?" I cannot acquiesce in Mr. Richardson's second proposition; or in the principle upon which it is founded. It is true the law and usage of slavery have no immediate connection with religion: and so far we are not under the embarrassment which restricted us in proposing rules concerning the sacrifice of Hindoo widows on the funeral piles of their husbands.<sup>1</sup> The regulation which has been in force since the year 1772, viz. "In suits regarding succession, inheritance, marriage, and cast, and all religious usages and institutions, the Mahomedan laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos, are to be considered the general rules by which the judges are to form their decisions," is, moreover, not directly and strictly applicable to questions of personal freedom and bondage. But in the year 1798, the court of sudder dewanny adawlut, with reference to the long-established and sanctioned usage of slavery in these provinces, stated their opinion, "that the spirit of the rule for observing the Mahomedan and Hindoo laws, was applicable to cases of slavery; though not included in the letter of it;" and this construction was confirmed by the Governor General in Council on the 12th April, 1798. Admitting Mr. Richardson's position, that the British Government acquired their right of legislation from a Mosulman power; it must still be remembered, in all regulations of local enactment, that the British legislature, whilst (in a recent act of Parliament, 53 Geo. III. cap. 155.) it has declared the duty of the United Kingdom "to promote the interest and happiness of the native inhabitants of the British dominions in India;" and that "such measures ought to be adopted as may tend to the introduction among them of useful knowledge, and of religious and moral improvement;" adds an express provision, that "the principles of the British Government, on which the natives of India have hitherto relied for the free exercise of their religion, be invariably maintained." Admitting further, that this legislative provision does not prohibit any local regulation for the amelioration of morals, and extension of happiness, among the natives of British India, not inconsistent with a free exercise of their religion, it must still be granted, that if the spirit of the rule for observing the Mahomedan and Hindoo laws, which has guided the East India Company's courts of judicature, since their first establishment in these provinces, be applicable to cases of slavery, the fair and impartial application of it will require, as heretofore, the same regard to the Hindoo law, as to the Mahomedan, when the claimants may be of either persuasion. The actual existence of numerous slaves in the possession of Hindoo landholders, (as noticed in the 19th paragraph of Mr. Richardson's letter, under date the 23d March, 1808,) contradicts his supposition that the Hindoo law of slavery had

<sup>1</sup> "I cannot omit taking the present occasion to add, on this subject, that as there is only one, and that a local authority, for allowing widows, having infant children, to deprive them of maternal care, by suicide; and other authorities of at least equal weight, give it no sanction; the lamentable and injurious practice in such instances, might, I think, be safely prohibited. This indeed is proved by Mr. Bayley's experience in the district of Burdwan."

head of law, it might be productive of much practical inconvenience, as well as delay of justice, if a reference to the law officers were required in every

remained dormant under the Mosulman Government; and I am not aware of any preference given by the judicial regulations now in force to the Mahomedan law, where the parties are Hindoos; except in the administration of criminal justice, which would not admit of two systems, essentially differing from each other in the definition of crimes and punishments, and in which the Mahomedan criminal law was adopted, as the basis of a future uniform system, not so much from any consideration of its specific provisions, as from its having been long in force under the Mosulman Government, and being therefore generally known to the inhabitants of the country.

For the above reasons, I think it incumbent upon me to object to the standard of decision proposed by Mr. Richardson, in cases of slavery wherein the claimant may be a Hindoo; though a rejection of it must, in a great degree, defeat his humane intention of enacting a virtual, though not avowed, discontinuance of slavery, by rendering all claims and disputes respecting it determinable according to the Mahomedan law, when, at the same time (as declared in the sixth section of the regulation proposed by him) he "supposed that, at the present time, it is hardly possible to establish the right of property of one man over another, according to the principle, the spirit, and the letter of the Mahomedan law."

My own idea is, that whilst regard is shown to the laws of the country relative to slaves, with such modifications as justice and humanity may indispensably require, the same authority should be allowed to the Hindoo, as to the Mahomedan law, for persons of each persuasion. But that in all cases wherein a person may claim the property, possession, or service, of another as his slave, and the latter deny that he is the lawful slave of the former; it should be required of the claimant, whether a Mosulman or Hindoo, to prove that the person claimed by him is legally his slave, according to the provisions of the law acknowledged by the claimant; and that in default of such proof the alleged slave should be declared free and emancipated. Slavery not being sanctioned by any system of law which is recognized and administered by the British Government, at this presidency, except the Mahomedan and Hindoo laws, I am of opinion that no claim to the property, possession, or service, of a slave, should be admitted and enforced by the magistrates, except in behalf of a Mosulman or Hindoo claimant. At the same time, it would, I think, be expedient to declare, that the above restriction shall not be considered applicable to voluntary contracts of hire and service, which have been, or may be hereafter, entered into, by persons of full age, and in every respect competent to form the same, whether the contract be for a limited period, or for life; and whether the stipulated hire for service be wages or maintenance. Such contracts are not deemed incompatible with the principles of justice and policy which have dictated the laws of England; (see Blackstone, vol. iv. page 425;) and by sanctioning them it may be expected, that the Hindoo practice of voluntary subjection to slavery, in times of famine or scarcity, will be converted to a condition more favorable to the servant and his family. At all events, no person subjecting himself to voluntary slavery should thereby entail bondage upon his children; though, if another maintain them, he may be allowed to engage their services for a period sufficient to provide an ample remuneration for their support. As no parent can have a legitimate right to impose the yoke of slavery upon his children, and their descendants in perpetuity, I see no objection to the adoption of Mr. Richardson's proposition for prohibiting the sale of children as slaves, whether by their parents or others. In that case however, parents and guardians having the care of children, under the age of 15 years, (being the age of maturity fixed by the Mahomedan and Hindoo laws) should be expressly empowered to contract for the support and service of such children, when indispensably necessary for their maintenance, provided that the contract shall not extend, in any instance, beyond the expiration of the 25th year of the age of the child so contracted for. Without some provision to this effect, there would be considerable risk that a prohibition of the sale of children as slaves, in times of scarcity, or of occasional distress of the parents, would prove injurious, by their being left to perish. Persons contracting for their personal services, or children or wards, whose services are contracted for under the provisions above stated, should not be designated slaves; but should be considered hired servants; and their offspring, who may be born during the term of their servitude, should not be deemed slaves, or in any respect the property of their masters. The children of female slaves, recognized by the Mahomedan and Hindoo laws as the ab-



All cases of an intricate or special nature, not expressly provided for by the regulations, within the intention of the general rule.

instance of contract or dealing, however inconsiderable. But in all cases of an intricate or special nature, not expressly provided for by the regulations,

solute property of their owners, are considered by those laws to inherit the condition of their mothers, and consequently to be slaves for life; unless the acknowledged offspring of their owner, in which case both the mother and child are entitled to freedom. But it is obviously repugnant to every principle of natural justice, and inconsistent with the common rights of mankind, that any person should be deprived of his personal freedom during the whole of his life, without his consent; and without having committed any offence subject to so heavy a punishment. It appears to me, therefore, that the British Government is urgently impelled, by motives which cannot be mistaken, or reasonably disapproved, to modify the laws in force, so far as to provide for the future emancipation of slaves hereafter born under its protection, at the expiration of a period when their services may be presumed to have fully compensated for all expense incurred in their support during infancy, viz. at the age of 25 years. I do some violation to my own feelings in suggesting that the above modification of the existing laws should be restricted to children hereafter born under the protection of the British Government. I should willingly extend it to children already born under that protection, if I were not apprehensive that a sudden alteration of established proprietary rights, by immediately affecting the interests and convenience of a considerable number of persons, would produce a degree of dissatisfaction, which may be obviated by rendering the operation of the proposed amendment more remote and contingent."

"In a letter from the secretary to government in the judicial department, dated the 24th May, 1816, the court were desired in preparing a draught of the proposed regulation regarding slavery, to "take into their consideration the expediency of requiring that the future purchase or transfer of slaves should be regularly registered; and that any breach of the rules which may be framed for that purpose shall entitle the slave to demand and obtain his freedom." To this measure I see no objection; and am further of opinion that two distinct registers should be kept by the zillah and city magistrates, according to forms prescribed by the court of nizamat adawlut, viz. one of ascertained slaves; the other of hirelings, whose services may have been engaged, on a stipulation of wages, or maintenance, either for life or for a limited period exceeding three years. The detailed rules for each of these registers are included in the accompanying proposed regulation; and therefore need not be specified in this place."

"The Mahomedan and Hindoo laws not containing any specific and adequate rules for preventing the mal-treatment of slaves by their owners, especially for guarding against future mal-treatment, by emancipating the slave in cases that appear to call for this measure, on grounds of justice and humanity, it is indispensably necessary to prescribe rules for the guidance of magistrates and criminal courts in such cases. I have accordingly included those which occur to me as equitable and proper, in Section 16 of the proposed regulation; and in Section 17, the same rules are extended to the protection of persons not in a state of slavery, who may be held in service for life, or for a limited period, as hirelings, sanctioned by the Mahomedan and Hindoo laws, or by the preceding sections of the regulation. The kidnapping of children and selling them as slaves, (to which one of Mr. Richardson's propositions refers,) is an offence now cognizable by the criminal courts. So atrocious a crime however requiring the most exemplary punishment, I have proposed, (in Section 18) to direct the magistrates to commit the offender for trial before the court of circuit, whenever there may appear to be sufficient grounds for his conviction, and there may be no circumstances of extenuation, such as to render the degree of punishment which the magistrates are empowered to adjudge, fully adequate to the guilt of the prisoner, under all the circumstances of the case. A proclamation forbidding, under penalties, the exportation of natives of India, to be sold as slaves, was issued by the Governor General in Council, under date the 22nd of July, 1789. But the existing regulations do not contain any specific provision on this point. I have therefore proposed, in Section 19, to declare the exportation from the British territories of any person born in those territories, to be disposed of, or dealt with, as a slave, a criminal offence, punishable on conviction in any of the criminal courts established under the British Government; unless the person so exported shall have been produced before a magistrate and registered as a slave. The concluding section relates to the importation of slaves from foreign countries; which has been prohibited and declared punishable, by Regulation 10, 1811. The importation of slaves by sea into any part of the British territories of India, has also been de-

it is customary, and obviously according to the spirit and intention of the general rule above cited, that the matter in contest be determined by the law of the parties.

When a reference to the law officers is deemed necessary, a statement of the facts, on which the question of law may arise, is to be made out in writing, signed by the judge of the court, and delivered to the law officer for his opinion; which he is to return on the same paper, or on a paper annexed to it, attested with his signature. The judges of the zillah and city courts are strictly enjoined not to order, or allow, a report of any matters of fact, relating to a cause depending before them, with a view to pass a decree thereupon, to be made to them by any officer of the court, or other person, excepting cases in which special authority for that purpose may be given by the regulations. But in cases of disputed property, regarding lands, houses, or boundaries, in which the court may deem a local investigation proper, it is authorized to appoint an aumeen (commissioner,) who is to be sworn to make a true and faithful report of the matters he may be directed to investigate, (as well as not to take or receive, from either party, any gratuity or reward, besides the sum allowed to him by the court;) and whose written report, subscribed with his name, "is to be received as evidence in the cause, with regard to the matters which the aumeen may be commissioned to investigate, and no other." The allowance to the aumeen, as fixed by the court, and any necessary expence attending the execution of his commission, are to be added to the costs of suit, and paid by the person against whom the decree may be passed. It is however a general rule that the plaintiff (and the spirit of it is equally applicable to the defendant) shall, in the first in-

clared felony by the statute 51 Geo. III. cap. 23. : and under the construction given to that statute by the resolutions of government, under date the 9th September, 1817, it must be considered to have superseded such parts of Regulation 10, 1811, as relate to the importation of slaves by sea. The provisions contained in Sections 2, 3, and 4, of this regulation are however still in force with respect to the importation of slaves by land; and with reference to the intention of those sections, communicated in a letter from the secretary to government in the judicial department, dated the 14th of February, 1817, I have suggested that they be declared to extend to the importation of any person whatever, to be sold or otherwise disposed of, or dealt with, as a slave; excepting only persons who may have been actually possessed by the importers as their domestic slaves, for a period of at least one year previous to the importation of them into the British territory; and may be produced and registered as such within six months after their importation, in the mode prescribed by Section 12 of the proposed regulation. It does not occur to me that any part of that regulation calls for further explanation; and I therefore submit it, with this minute, to the judgment of the court, and of his Excellency the Governor General in Council; with an earnest hope that the provisions contained in it, with such amendments as shall arise from a deliberate consideration of the subject, may, under Providence, be effectual to the attainment of the important object proposed; an increase of security, ease, and happiness, to a considerable portion of the human species, present and future; who, though exempt from many of the evils to which slaves in other parts of the world have been exposed, are still in a state of pitiable degradation; which the well-known commentator on the laws of England has pronounced "repugnant to reason and the principles of natural laws;" with an argument, showing, that the assigned origins of the right of slavery, in the civil law, which correspond partly with the principles of the Mahomedan and Hindoo laws, "are all of them built upon false foundations."

J. H. HARRINGTON.

21st November, 1818.

<sup>1</sup> The provisions made by Sections 50, and 76, of Regulation 23, 1814, for employing moonsiffs and sudder aumeens, at the discretion of the zillah and city judges, in local investigations, adjustments of accounts, and otherwise, will be hereafter noticed, in stating the rules contained in that regulation, "regarding the office of moonsiffs, or native commissioners; and of sudder aumeens, or head commissioners."

R. 4, 1798, § 16, extended to Benares, by R. 8, 1795, and re-enacted for ceded provinces in R. 3, 1803, § 17. In what manner opinion of law officers to be taken. No report of facts to be made by any officer of the court, or other person, except in cases authorized. R. 4, 1798, § 17, extended to Benares by R. 8, 1795; and re-enacted for ceded provinces by R. 3, 1803, § 18. A local investigation may be ordered in certain cases. R. 4, 1798, § 18, extended to Benares by R. 8, 1795; and re-enacted for ceded provinces in R. 3, 1803, § 19. General rule for payment of charges in the first instance.

stance, "pay the charges of all process attended with expense which may be issued in his behalf previous to the decision of the suit."

Provisions for referring suits to arbitration, contained in Reg. 16, 1793; extended to Benares by R. 15, 1796; and re-enacted for ceded provinces in R. 21, 1803.

Sec. 2. What suits exceeding two hundred rupees, the courts are to recommend to the parties to refer to arbitration.

Sec. 3. Cases in which the courts are empowered to nominate one person to arbitrate with the consent of the parties.

Parties to have the option of referring their causes to two or more arbitrators.

Sec. 4. Courts to encourage, but not oblige persons to become arbitrators.

Sec. 5. Court how to proceed upon the parties agreeing to refer a cause to arbitration.

With a view to promote the reference of disputes of certain descriptions to arbitration, and to encourage people of credit and character to act as arbitrators; the following rules were enacted in Regulation 16, 1793, extended to Benares, by Regulation 15, 1795; and re-enacted for the ceded provinces in Regulation 21, 1803.

§ 2. "In suits that may be brought before any of the courts of civil jurisdiction concerning disputed accounts, partnerships, debts, doubtful or contested bargains, or non-performance of contracts, in which the cause of action shall exceed two hundred sicca rupees, the courts are to recommend the parties to submit the decision of the matters in dispute to arbitration." § 3. "In all suits for money or personal property, the amount or value of which shall not exceed the sum of two hundred sicca rupees, the courts are empowered, with the consent of the parties, to refer the suit to the decision of one arbitrator. The parties, or their vakeels, upon agreeing to the reference, shall, on or before the next court day, mutually choose some one common friend or indifferent person, who may be willing to undertake the arbitration. If the parties shall not agree with respect to the person to be appointed arbitrator, or if the person nominated by them shall refuse to accept the arbitration, and the parties, or their vakeels, cannot agree in the appointment of another person willing to undertake the arbitration, the court, with the consent of the parties, is to appoint as arbitrator in the cause, the proprietor of the estate in which the cause of action shall have arisen, or the farmer, if the estate be held in farm of government, or the cauzy of the pergunnah, or the tehseeldar, or any other creditable person; provided that the person, so to be nominated by the court, be not in any respect interested in the matter in dispute. But if the parties cannot agree in the nomination of an arbitrator, or if the person whom they may nominate shall refuse to accept the trust, and the parties cannot agree upon the appointment of any other person willing to undertake the arbitration, or shall not consent to the appointment of an arbitrator by the court, the cause is not to be referred to arbitration; but is to be tried by the court, or the register if the cause be depending in a zillah court, and the judge shall think it proper to refer it to him for decision. In the event of the parties, or their vakeels, agreeing in the nomination of an arbitrator, willing to accept the arbitration, or to an arbitrator being appointed by the court, the person so chosen or appointed shall be the arbitrator in the cause. The parties however, in suits of the nature of those described in this section, are to have the option of choosing two or more arbitrators to decide their cause, in the same manner as the parties in the causes specified in Section 2." § 4. "The judges of the courts are enjoined to afford every encouragement, in their power, to persons of character and credit to become arbitrators; but they are not to employ any coercive means for that purpose, nor to permit any of their public officers, or private servants, or any of the authorized vakeels, to be arbitrators in a cause. In all cases, the courts are directed to endeavour, but without using any compulsion, to prevail upon parties to submit their cause to the arbitration of one person, to be mutually agreed upon by them. In every case (with the exception of the cases specified in Section 3, which the courts are empowered to refer to one arbitrator with the consent of the parties) the parties are to choose the arbitrators, who are to decide the matter in dispute without fee or reward." § 5. "Whenever a suit shall be submitted to arbitration, the court in which it may have been instituted, previous to the arbitrator or arbitrators entering on the arbitration, is to cause the parties to execute arbitration bonds, binding themselves to abide by the award, and agreeing that it be made a decree of

the court. The court is to fix such time as it may think reasonable, upon a consideration of the nature and circumstances of the case, for the delivery of the award; and the period so fixed is to be specified in the bonds. If the cause shall be referred to two or more arbitrators, the following provisions are to be made for completing the award, in the event of the arbitrators not delivering it by the limited time, either from disagreement or other cause. If the decision of the suit shall be referred to two or more arbitrators, whether an odd or an even number, the parties are to have the option of nominating jointly one person as umpire; or if the number of arbitrators appointed shall be three or more, being an odd number, to agree that the award given by the majority shall be final; or to permit the arbitrators to nominate an umpire. The name of the umpire, and the time by which he is to make his award, in the event of the arbitrators not delivering it by the limited period, is to be specified in the bonds, which are to be executed before the arbitrators enter upon the enquiry. In the event of an umpire being appointed, and the arbitrators not agreeing in an award by the limited period, their authority is to cease from such period, and the umpire is to give his award."

Provisions to be made against the arbitrators not delivering in their award by the limited time.

§ 6. "When a cause shall be referred to arbitration, and the bonds, specified in the preceding section, shall have been executed, the court is to transmit to the arbitrator, or arbitrators, a copy of the bill of complaint, and by a short writing under the seal of the court, refer to him or them the matters in dispute between the parties. In the trial of the suit, the arbitrators are to investigate the matters in dispute, by hearing the pleadings of the parties and examining their respective witnesses and documents. The court is to issue the same process, to the parties, and to the witnesses, whom the arbitrator or arbitrators, or the parties, may desire to have examined, to appear before the arbitrator or arbitrators, and to administer such oaths to the parties and witnesses, as the court is authorized to administer in causes tried before it; and persons not attending in consequence of such process, or making any default, or refusing to give their testimony, or to sign their depositions, or being guilty of any contempt to the arbitrator or arbitrators during the investigation of the suit, are to be subject to the like disadvantages, penalties, and punishments, by order made by the arbitrator or arbitrators, as they would incur for the same offences in suits tried before the court; provided that the arbitrator or arbitrators shall report the order, with the reason for making it, to the court, and obtain its consent thereto; which is to be signified by the judge or judges signing the order. In cases in which an arbitration may be held at a considerable distance from the court, the court may grant commissions to the arbitrators to administer the proper oaths to witnesses, whom they may be desirous of examining upon oath." § 7. "In cases where arbitrators, or umpires, shall not have been able to complete the award by the limited time; from want of the necessary evidence, or information, or other good and sufficient cause; the courts are empowered to allow a further time for the delivery of the award. In the first mentioned case, the courts are to fix a period, by which the umpire (if an umpire shall have been appointed) shall deliver his final award, in the event of the arbitrators not completing their award by the expiration of such further time." § 8. "When a final award in a cause shall be made, either by the arbitrators, or the umpire, it is to be submitted to the court, under the seal and signature of the person or persons by whom it may be made, together with all the proceedings, depositions, and exhibits in the cause. The court is to pass a decree conformably to the award; and the decree is to be carried into execution, in the same manner as other decrees of the court." § 9. "The award of an arbitrator or arbitrators is not to be set aside; except it be fully proved to the satisfaction of the court, by the oaths of two credible witnesses, that the arbitrator or

Sec. 6. Courts how to proceed when the arbitration bonds have been executed.

Sec. 7. Cases in which the courts may extend the period for the delivery of an award.

Sec. 8. Arbitrators to deliver all documents and papers into the courts.

Award to become a decree of the court.  
Sec. 9. Awards not to be set aside but upon

proof of corruption or partiality. Additional provisions enacted in Regulation 6, 1813.

Sec. 2. Parties in suits respecting land, are at liberty to refer their suits to arbitration.

Rules contained in R. 16, 1793, and R. 21, 1803, to be considered applicable to suits referred to arbitration under the present regulation.

Sec. 3. Persons between whom disputes may exist respecting land are at liberty to refer the same to private arbitration. How the award is to be carried into execution and during what period.

arbitrators has or have been guilty of gross corruption or partiality in the cause, in which the award may be made."

The following additional provisions, for referring to 'arbitration' suits and contests respecting land, were enacted in Regulation 6, 1813.

§ 2. "*First.* Parties in suits depending in the civil courts of judicature respecting the property in land, or limited tenures therein, or rights dependent thereon, shall be at liberty to refer their suits to arbitration; and shall by all due means be encouraged by the courts to resort to that mode of adjusting their differences." "*Second.* The rules contained in Regulation 16, 1793, and Regulation 21, 1803, respecting the reference of suits to arbitration, the appointment of arbitrators or umpires, the investigation of suits referred to arbitration, the time and mode of making the award, and the setting aside or confirming the same, are declared applicable to suits referred to arbitration by the courts of judicature under this regulation." § 3. "*First.* Persons between whom disputes may exist respecting the property of land or limited tenures therein, or rights dependent thereon, whether the same be or be not depending in the courts of judicature, are at liberty without any application to the courts, to refer the same to private arbitration; and the awards made by the arbitrators and umpires appointed in such case by the parties, shall be supported and enforced by the courts, under the following rules and limitations." "*Second.* "Whenever a dispute respecting the matters above enumerated shall have been referred to private arbitration, and an award shall have been duly made, if either party shall refuse to perform the award, it shall be competent to the other party, within the period of six months from the date of the award, to apply summarily to the dewanny adawlut; and upon such application, if the court, after calling upon the opposite party for his answer, be satisfied that the award was duly made by arbitrators or umpires appointed by the free will and consent of the parties, and such award shall be liable to no impeachment, which would have warranted the setting it aside, if it had been made under the authority of the court, shall cause the same to be summarily executed as a decree of court, calling upon the arbitrators and umpires, if necessary, to attend and give their assistance in the execution of their said award; provided always, that if such application for the enforcement of a private award shall not be made within the period above prescribed, the court shall not admit any plea whatever for the delay; but shall reject such application and refer the party preferring it to a regular suit."

Whenever private awards are tendered by the parties in regular suits, the courts how to proceed in those cases.

*Third.* "Whenever private awards shall be tendered by the parties in regular suits, the courts, if such awards shall appear to have been performed, and the possession of the contested property to have been held under them, shall allow equal validity to the same, as if they had been made under the authority of the courts. But if the awards tendered shall not have been performed at

The summary process authorized by this clause is subsidiary to a regular suit, either in the zillah, or city court, or in the provincial court, according to the value of the disputed property. This was determined by the court of sudder dewanny adawlut on the 24th February, 1816. But the following remark was, at the same time, added in their register's circular letter of that date. "As it is evidently intended by the provisions of Section 3, Regulation 6, 1813, that the private awards therein mentioned, when summarily confirmed and enforced by a zillah or city court, should have the same validity as if made under the authority of a court of judicature, pursuant to the rules noticed in the preceding section, the court are of opinion that on the trial of a regular suit or appeal, instituted by the party against whom the award may have been given, it should not be set aside, except it be fully proved to the satisfaction of the court, by the oaths of two credible witnesses, that the arbitrators have been guilty of gross corruption or partiality, as expressly provided in Section 9, Regulation 16, 1793."

all, or shall have been performed only in part, the courts shall not admit the same, unless they be established by clear and satisfactory proof; shall be distinct and intelligible so as to admit of easy execution; and the delay, which may have occurred in the performance of them, shall also be duly accounted for."

§ 4. "There being reason to believe that decrees have been passed by many of the civil courts of judicature, founded both upon awards made under the authority of the court, and also private awards respecting the property in land and limited tenures therein and rights dependent thereon, it is hereby declared that, after the promulgation of this regulation, no decree relating to the matters above enumerated, shall be amended or reversed upon the ground of the same being founded on an award of arbitration not authorized by the regulations, at the time the award was made, unless such award be in itself open to just cause of impeachment."

Sec. 4.  
No former decree of court on awards of arbitration respecting land to be amended or reversed unless open to just cause of impeachment.

In all causes concerning demands, arrears, or exactions, of rent, and other matters heretofore cognizable in the courts of *mál adawlut*, between the landholders or farmers of land, and their under-tenants; or between any other persons concerned in the collection or payment of the land-rents; and in which neither the collectors, or their public officers or private servants, or government, may be parties; the courts are empowered to refer to the collector of the district, for adjustment and report, any accounts which it may be necessary to adjust for the decision of the suit; and the judges are required to make such reference in every cause, of the above description, which neither themselves or their registers may be able, from other avocations, to try and determine without delay; and which may not be cognizable by the native commissioners acting under them. A precept to the collector is to be issued in such cases, under the signature of the judge and seal of the court, specifying the accounts and papers referred; and the time by which the report is to be made. The judge may, at the same time, command the parties or their vakeels (being any persons duly empowered to act for them) and their witnesses, to attend the collector; and empower the latter to examine the witnesses, as well as the parties, if they agree to be so examined, upon oath. The collector is to submit his report by the time limited, or assign his reasons for not having been able to complete it, and the judge, upon the receipt of the collector's report, may either confirm, set aside, or alter his adjustment of the accounts, or pass such decision respecting them as shall appear to him proper. The declared object of this provision is "to expedite the administration of justice, by relieving the zillah and city courts from the trouble of arranging and comparing long and intricate accounts: the adjustment of which is frequently necessary for the decision of suits between individuals respecting land rents."

R. 8, 1794, § 13, extended to Benares by R. 54, 1795.  
R. 7, 1799, § 15, extended to Benares, by R. 5, 1800, § 14.  
R. 28, 1803, § 33.  
R. 7, 1819, § 2.  
In what causes the judges are empowered, and required, to refer accounts for adjustment to the collectors.  
In what manner such references are to be made.

Report to be made by the collector.  
And decision to be passed thereupon by the judge.

Object of this provision.

<sup>1</sup> It was further provided in Section 21, Regulation 5, 1812, "for amending some of the rules in force for the collection of the land revenue," that the whole of the suits instituted under that regulation should, with a view to expedite their decision, be referred, as soon as instituted, for the report of the collector of the district; as more fully stated in the third volume of this Analysis, page 538. But in some instances a strict adherence to this rule was, from different causes, found to retard, instead of expediting, the investigation and decision of the suits in question. The judges of the zillah and city courts were therefore (by Section 13, Regulation 19, 1817,) "declared at liberty, in future, on the institution of summary suits, under any of the provisions of Regulation 5, 1812, either to refer the same, for adjustment and report, to the collector of the district; or to investigate and decide such suits themselves, without reference to the collector; or to refer them for investigation and decision to their registers; as may appear most conducive to the speedy trial and determination of the suit in each instance." They were, at the same time, "enjoined to refer for the collector's adjustment

R. 4, 1793, § 19, extended to Benares by R. 8, 1795; and re-enacted for ceded provinces by R. 3, 1803, § 20. Order, in which causes are to be brought on for trial.

R. 4, 1793, § 10, extended to Benares by R. 8, 1795; and re-enacted for ceded provinces, in R. 3, 1803, § 12.

Rule for nonsuits, in cases of neglect for six weeks.

Explained by sudder dewanny adawlut, as not precluding a new suit. Further explanation of the neglect, to which the rule applies; and the mode of proceeding required, in the application of it.

Reason for stating this explanation.

The causes depending in the zillah and city courts are to be brought on for trial according to the order in which they may be filed; excepting cases in which it may be otherwise directed by any regulation; or in which the judge may think it proper, for special reasons, which he is to state at large upon the record of the trial, to bring on the cause before its turn. "If the plaintiff at any time neglect to proceed in his suit for six weeks, it is to be dismissed, unless he can show good and sufficient cause for not having proceeded in it; and the court is to award to the defendant the whole or any part of the costs incurred by him in the suit, as it may deem equitable." The judge is, at the same time, directed to record upon the proceedings his reasons at large for dismissing the suit of the plaintiff, or allowing him to prosecute it after he shall have neglected to proceed in it for six weeks; and the zillah and city courts were informed by a circular notice from the sudder dewanny adawlut, dated the 22d August, 1795, that "the plaintiffs in causes dismissed under this rule have the option of re-instituting them under the regulations;" viz. by instituting a new suit in conformity with the general rules in force. The court, on the 5th October, 1797, upon a reference from the judge of zillah Backergunge, further declared the meaning and intent of the above provision to be "that if a plaintiff shall neglect, for the term of six weeks, to perform any act required from him in the regular prosecution of his suit, he is to be nonsuited; but *before* the judgment of nonsuit is passed against him, he is to be called upon to show cause for not having proceeded in it, and such cause is to be admitted to bar the nonsuit, if good and sufficient; but not otherwise." This explanation of a penal rule, which has been sometimes misapprehended, is here introduced, with a view to guard against its erroneous application; to the injury of the parties affected by it, who were formerly liable in consequence to all the expenses of a second suit; and are still exposed to expense and loss of time in obtaining a reversal of the nonsuit, by an appeal to the provincial court, under the provisions contained in Section 3, Regulation 26, 1814.

R. 4, 1793, § 20. R. 8, 1795, § 4, and 9.

R. 3, 1803, § 21. R. 14, 1805, § 11. R. 24, 1814, § 11.

In what languages process of civil courts to be written or printed, and how to be issued.

Allowance to peons, not on the public establishment, who may be required to execute it.

All orders and process of the civil courts, which may be directed to be served, or executed, on any person, are to be written, or printed, in the Persian and Bengal (or Oryah) languages in the provinces of Bengal and Orissa, and in the Persian and Hindoostanee languages in Behar, Benares, and the western provinces; and to be sealed with the seal of the court; and to be signed by the judge or register. When process is issued against any person not present at the place where the court may sit, and a peon, or peons, may be required for serving, or executing it, each peon is to be paid by the party, in whose behalf it may be issued, four annas (in Benares two annas) per day, except in districts where custom may have fixed the subsistence money of peons at a lower rate; but no greater number than two are to be deputed to serve or execute any process; and one only, unless in particular cases two may appear necessary.

and report, as heretofore, all suits which are so referable under the regulations in force; and which the judges themselves, or their registers, may be unable to try and determine, without delay."

'The explanation cited was repeated in substance, in a circular letter from the register of the sudder dewanny adawlut to the provincial courts of appeal, which will be more particularly noticed in the sequel.

'More properly called *Piddahs*; being literally footmen; and corresponding with the beadies, apparitors, and messengers, of the English courts; but here meaning such only as are employed without a fixed salary. Those upon the public establishments, who receive an allowance from government, are denominated *Chuprassees*, or badge peons. The rules enacted in Section 14, Regulation 26, 1814, for regulating the subsistence money of peons not receiving a fixed salary, have been stated at length in a preceding note.

If any zemindar, talookdar or other landholders, or a farmer of land holding his farm immediately from government, or any other person, shall resist, or cause to be resisted, any process, rule, order, or decree, of a zillah or city court; upon proof of such resistance, after the offender shall have been duly summoned to answer to the charge, and on non-appearance proceeded against by proclamation,<sup>1</sup> the court is empowered to decree the forfeiture of his zemindary, talook, or other estate, in which the resistance may have been made; or, if made out of the limits of the offender's estate, the forfeiture of any landed property he may possess within the jurisdiction of the court whose process shall have been resisted: or, if the offender be a sudder<sup>2</sup> farmer, that his lease be cancelled from the expiration of the current year: or if he be neither a landholder, or sudder farmer, or although such, if the judge of the court, whose process may have been resisted, shall be of opinion that a fine to government is a more proper and adequate punishment for the offence, than a forfeiture of the offender's estate or farm, he is authorized to adjudge the payment of such fine to government as may appear proper, upon a consideration of the offender's situation and circumstances, and the offence of which he may be convicted; subject to the general provisions for appeals from the judgments of the zillah and city courts.<sup>3</sup> But in all cases wherein a final decree may be passed for the forfeiture of an estate, or farm, on account of resistance of process, a copy of the decree and of the proceedings held upon the case, is to be transmitted to the Governor General in Council; to whom is reserved an option of either ordering the decree to be executed, or of commuting the forfeiture for such fine as he may think adequate; and the decree of forfeiture is not to be carried into execution until notice be received of his confirmation of it.

Reserving for the latter part of the present section the general regulations, which relate indiscriminately to the whole of the civil courts, of appellate as well as of original jurisdiction; and for the succeeding parts of this analysis the provisions made for summary judicial processes, in cases of arrears of rent, as well as in certain cases connected with the public revenue; it may be stated, in this place, that besides the powers vested in the zillah and city courts, for the trial and decision of regular suits, under the rules which have been specified, they are empowered by Regulation 49, 1793, (extended to Benares by Regulation 14, 1795; and re-enacted for the ceded provinces in Regulation 32, 1803); for the purpose of preventing affrays respecting disputed boundaries, lands, crops, and other property; to take immediate cognizance of complaints of forcible dispossession from land or crops; (as well as from tanks, reservoirs, wells, or water courses in the province of Benares);

R. 4, 1793, § 23, to 24.  
R. 6, 1795, § 5, to 8. R. 9, 1799.  
R. 3, 1808, § 23, to 26.  
Penalties for resistance to the process of a zillah or city court, by a landholder, principal farmer, or other person.

Judgments given in such cases subject to the general provisions for appeals.  
And if for the forfeiture of an estate or farm commutable to a fine, by the Governor General in Council.

R. 49, 1793, extended to Benares, by R. 14, 1795; and re-enacted for ceded provinces in R. 32, 1803.  
Summary process authorized in cases of forcible dispossession from land, or other property, for immediate recovery of possession.

<sup>1</sup> The regulations noticed in the margin direct that "the court, on proof of the resistance being made by oath to its satisfaction, is to cause the offender to be summoned to answer to the charge. If the offender shall abscond, or shut himself up in his own or in any house, or building, or retire to any place so that he cannot be served with the summons, the court is to proceed against him in the manner directed with regard to other persons absconding, or acting as above specified, so that they cannot be served with the process of the court."

<sup>2</sup> Literally original, head, superior; opposed to *Mofussil*, subdivided, subordinate, inferior. With respect to tenures, it is usually applied to such as are held *in capite*, or immediately from government. *Sudr-o-Mofussil* also denote the town and country; or more commonly the capital and its dependencies.

<sup>3</sup> In a circular letter from the register of the sudder dewanny adawlut, dated the 29th May, 1816, the court expressed their opinion "that as the original proceeding in cases of resistance of process, whether issued by a civil court, or by a collector, is of a summary nature, the appeal allowed by the regulations, in all such cases, from a judgment of forfeiture or other penalty, should also be considered summary, and subject only to such fees, or stamp duties, as are prescribed for summary appeals."



and upon the previous possession (or rather the violent dispossession) of the complainant being proved to their satisfaction, to cause the land, crops, or other property, of which he may have been forcibly dispossessed, to be restored to him; or the value of the crops, if damaged, destroyed, or not forthcoming, to be paid to him; with costs and damages; leaving the dispossessor to prefer his claim to the property in dispute by a regular suit in the dewanny adawlut; unless the dispossessor, or any persons accompanying him, in taking possession by force of the disputed property, shall kill, wound, or violently beat any person; in which case his right to the property in dispute is to be adjudged forfeited to the complainant; or if both parties assemble armed men; the one to take, the other to keep, possession of the disputed property; and a fray ensue, in which any person may be killed, wounded, or violently beaten; the disputed property is to be adjudged forfeited to government. The following are the detailed provisions of the regulations adverted to.—

Section 2.  
Persons having claims to disputed land or crops not to take possession of them by force.

Section 3.  
Persons forcibly dispossessed to complain to the judge of the Zillah.

Judge to hear the complaint immediately, and upon proof of dispossession to cause the land, or crops, to be restored to the complainant; or the value to be paid to him.

Section 4.  
Right of claimant to the disputed property to be forfeited if any person shall be killed, wounded, or violently beaten. Offender and all persons concerned with him liable to trial before the court of circuit.

Section 5.  
Claimants not present, but indirectly concerned in the acts above prohibited, liable to the same consequences as if present.

Section 6.  
Proprietors and others

§ 2. "If a proprietor or a farmer of land, or a dependant talookdar, or an under farmer, or a ryot, or other person, shall have a claim to any disputed land, or crops, in the possession of another, the claimant is prohibited from possessing or attempting to possess himself of the land or crops by force, but is to prefer his claim to the dewanny adawlut of the zillah. § 3. If any such claimant shall forcibly take possession of the disputed land, or crops, the party dispossessed shall be at liberty to represent the circumstances to the judge of the dewanny adawlut, who is immediately to take cognizance of the complaint, and, upon the previous possession of the complainant being proved to his satisfaction, shall, without enquiring into the merits of the claim of the dispossessor, cause the disputed land or crops to be restored to the complainant, or the value of the crops to be paid to him, if they shall have been damaged, destroyed, or shall not be forthcoming, and award against the offender such costs and damages as may appear to him equitable, leaving him to prefer his claim to the property in dispute to the dewanny adawlut. § 4. If any such claimant, or any persons accompanying him, in taking, or attempting to take, possession of the disputed land or crops by force, shall kill, or wound, or violently beat any person; the judge, upon the complainant proving previous possession to his satisfaction, shall not only proceed against the offender as directed in the case specified in Section 3, but his right to the disputed land, or crops, shall be adjudged forfeited to the complainant; and, whether the dispossession be proved to the satisfaction of the judge or not, the offender and all persons aiding or assisting him in the act, shall be committed or held to bail (according to the circumstances of the case) to take their trial before the court of circuit. § 5. If the agents, servants, or dependants, or any persons in the employ of a claimant to the disputed land or crops shall take or attempt to take possession thereof by force, and the actual claimant shall not be present, the judge shall nevertheless restore the disputed land or crops, or the value of the latter, to the person who had possession, if he shall have been dispossessed, and proceed against the parties actually present in the manner directed in Section 4, in the event of their having killed, wounded, or violently beaten any person; and if it shall be proved that the parties immediately concerned in taking or attempting to take possession of the disputed property, acted by the orders, or with the knowledge or connivance of the actual claimant, he shall forfeit his right to the disputed property to the person dispossessed; and be liable to be proceeded against in the criminal court, in the same manner as if he had been present. § 6. This regulation affording ready means of redress to all persons who may be forcibly dispossessed of land or crops, proprietors and farmers of land, dependant talookdars, under farmers, and ryots, and all

other persons, are prohibited from arming themselves, or entertaining armed pykes, or other persons, for the purpose of keeping possession of, or guarding, any disputed land or crops; and if any claimant to disputed land or crops shall go armed with a sword, stick, or other weapon, or give orders for, or connive at, any persons going so armed, to take possession of such land or crops, and the party in possession of the land or crops, or any person having a claim thereto, shall go armed, or give orders for, or connive at, the assembling of any armed men, to prevent such claimant, or armed persons on his part, taking possession of the land or crops, or to dispossess them by force should they have taken possession of the property, and a fray shall ensue, and any person be killed, wounded, or violently beaten, on either side, the land and crops in dispute shall be adjudged forfeited to government, and be disposed of as the Governor General in Council may think proper; and both of the claimants to the property, and all persons present, and assisting, or concerned in the fray, shall be committed to prison or held to bail (according to the circumstances of the case) to take their trial before the criminal court." It is explained in Regulation 5, 1798, that in cases which may appear to come within the last section, above cited, "the vakeel of government is to sue for the forfeiture on the part of government, in the dewanny adawlut of the zillah or city, wherein the land may be situated. It is further declared in Section 5, Regulation 2, 1805, that the summary enquiry and restoration to possession, authorized by the regulations abovementioned, "shall be restricted to cases of forcible dispossession, which may be complained of, to the proper zillah or city court, within three months after such dispossession shall have taken place; unless it be clearly shown and established that the complainant was prevented by good and sufficient cause from preferring his complaint, either in person or by his representative, within that period."

The following additional rules were enacted in Section 5, of Regulation 6, 1813.

"*First.* An opinion prevalent of the disadvantages attendant on becoming the plaintiff in cases of alleged forcible dispossession from lands, or forcible disturbance of the possession thereof, often preventing cases of this nature from being brought under the cognizance of the civil courts, whereby the said disputes instead of being adjusted, frequently continue until they terminate in breaches of the peace; to remedy this inconvenience, it is hereby provided, that, when a dewanny court shall be certified from the foudarry court, that disputes exist concerning any lands or premises likely to terminate in a breach of the peace if not adjusted, the dewanny court shall address perwannahs to the parties, calling on them to attend in person or by vakeel, and deliver a written statement of their possession, and adduce proof of their having been forcibly dispossessed or disturbed in their possession by the adverse party; whereupon the court, after an investigation of the statements and evidence of both parties, shall decide the case in the same manner as if it had been brought on by a complaint in the ordinary mode. *Second.* In all the cases of forcible dispossession and disturbance of possession mentioned above, but more especially of disputes respecting the boundaries of estates and premises, and the right to water for the purposes of irrigation, the dewanny courts are hereby authorised and required to use every proper means for inducing the parties to refer their disputes to arbitration, with a view either of settling their possession until the matter can be investigated on a regular suit, or to make a complete and final adjustment of their differences; and the award when made, shall, if open to no just cause of impeachment, be executed by the court with the assistance of the arbitrators. If the parties shall agree to authorize the arbitrators to make a complete and final award on their differences (which mode of adjustment shall in the cases contemplated in this

prohibited resisting by force of arms person attempting to dispossess them of disputed land or crops, or employing force to dispossess such persons in the event of their having taken possession, under penalty, in certain cases, of a forfeiture of the disputed land or crops, to government.

R. 5, 1798, § 7. Forfeitures, in above cases, by whom to be sued for and in what court. R. 2, 1805, § 5. Period limited for application of the summary process allowed on complaints of forcible dispossession.

Additional rules enacted in R. 6, 1813. § 5. In what cases the dewanny court to call on parties to attend and adduce proof of forcible dispossession or disturbance.

Court to use every proper means for inducing parties to refer their disputes, in such cases, to arbitration.

In what cases the court may attach the disputed lands.

But the lands so attached not exempted from the payment of the public revenue.

General rules for admission and trial of summary and special appeals, in regular suits, as well as for a review of judgments not under appeal, in such suits, will be stated in the Sequel. Provisions in Sec. 6, R. 24, 1814, for appellate jurisdiction of zillah and city courts.

section, be invariably promoted by the courts,) the agreement to refer shall carefully express that the award is intended to be final, and the award when confirmed by the courts, shall be held of the same force and validity as a regular judgment. *Third.* And whereas on complaints for forcible dispossession from land and forcible disturbance of the possession thereof, it occasionally happens that after due investigation the fact of possession cannot be ascertained, it shall in such cases be competent to the court before whom the matter is depending, to attach the disputed lands, and to appoint a person properly qualified and under adequate security to the management of the same by collecting the rents, discharging any public revenue demandable from the lands, and paying into court the profits which may result, after satisfying all necessary expenses and disbursements. But the courts are enjoined not to resort to this measure except when it may be found indispensable after a careful enquiry into the possession of the parties. Provided always, that nothing contained in this clause shall be construed to exempt estates or lands so attached from the responsibility to which they may be subject for payment of the public revenue to government, according to the engagements contracted by the proprietors.”

The general rules in force for the guidance of the civil courts in the admission and trial of summary, and of special or second appeals, from decisions passed in regular suits; as well as for a review of judgments, not under appeal, in such suits, when from the discovery of new evidence, or otherwise, there may be good and sufficient reason for a review of the judgment given in the case; will be stated in the sequel. But in concluding what has immediate reference to the jurisdiction of the zillah and city civil courts, it may be proper to notice in this place the following clauses of Section 6, Regulation 24, 1814. “*Second.* An appeal shall lie to the zillah or city judge from all decisions which may be passed on the trial of original suits by the moonsiffs, sudder ameens, and registers, of each zillah or city jurisdiction; provided however, that this rule shall not be construed to extend to any suits which may be tried and decided by a register, under the provisions of clause sixth, Section 9, of this Regulation.” “*Third.* The zillah and city judges are further authorized to admit a second or special appeal, from the judgments passed by registers in appeals referred to them under clause fourth, Section 8, of this Regulation, as well as from the judgments of sudder ameens, on appeals referred to them, from the original decisions of moonsiffs. In receiving and trying such special appeals, the zillah and city judges are to be guided by the rules contained in Section 2, of Regulation 26, 1814.”

### *Courts of Registers.*

R. 13, 1793, §6. Original rule for reference of certain suits

To prevent the time of the zillah and city judges from being occupied with the trial of petty suits, and consequently to enable them to determine

<sup>1</sup> The construction given by the court of sudder dewanny adawlut to the second clause of Section 3, Regulation 6, 1813, in cases of dispute regarding land referred to arbitration, viz. that the summary process thereby authorized is subsidiary to a regular suit, has been already noticed. In the register's circular letter of the 24th February, 1816, it was further stated “that their construction of the second clause of Section 3, Regulation 6, 1813, and of the validity of private awards summarily enforced by the zillah or city courts, in pursuance of that clause, is equally applicable to the private awards referred to in the concluding part of the second clause of Section 5, of the same Regulation. See the grounds of this construction more fully specified in the circular letter above-mentioned; page 93, of the *Circular orders of the sudder dewanny adawlut*, printed at Calcutta in the year 1817.

<sup>2</sup> This clause is cited at length under the head of *Courts of Registers*.

causes of magnitude with greater expedition, they were empowered, by Section 6, Regulation 13, 1793, to authorize the registers of their respective courts to try and decide suits for money, or any personal property, in which the amount or value contested should not exceed two hundred sicca rupees; and suits for malgoozary land, the annual produce of which should not be above two hundred sicca rupees; or for lakheraj land the proceeds of which should not be more than twenty sicca rupees per annum. But the same regulation directing that the decrees passed by the register were to be countersigned by the judge, to denote his approbation of them; and were not to be considered valid unless they were so countersigned; he was obliged to revise the proceedings of the register in every case; which often occupied as much of his time as would have been required for the trial of the suit in the first instance; and tended to defeat the object of the reference. With a view therefore to the more full attainment of that object, the section above mentioned was rescinded by Regulation 8, 1794, and the decision of the register was declared final in all suits referred to him for money or personal property, the amount or value of which should not exceed twenty-five sicca rupees; under a discretionary power, reserved to the judges of the zillah and city courts, of revising the decisions passed by the registers in such cases, whenever the decrees of the latter might appear to them obviously unjust or erroneous. It was, at the same time, provided, that from all decisions passed by the register, in suits for real property, or for personal property exceeding twenty-five sicca rupees, an appeal should lie to the provincial court of the division, under the rules prescribed regarding appeals from decisions passed by the judge. But this provision being found to interfere with the more important duties of the provincial courts of appeal, it was enacted by Regulation 36, 1795, that the appeal from the register's decision, before allowed to the provincial court, should in future lie to the judge of the zillah or city court; under rules similar to those prescribed regarding appeals to the provincial courts from decisions passed by the judges. These provisions were extended to Benares by Regulations 12 and 54, 1795; and were re-enacted for the ceded provinces in Regulation 12, 1803. But it was subsequently found necessary, for the more expeditious decision of suits in the zillah and city courts, to empower the judges by Section 6, Regulation 49, 1803, (re-enacted for the ceded provinces in Section 16, Regulation 8, 1805,) whenever, on consideration of the number of causes under reference to their registers, and the number depending before themselves, it might appear to them conducive to the more speedy administration of justice, to refer to their registers, for trial and decision in the first instance, any causes depending in their respective courts, for money or other personal property, not exceeding in amount or value the sum of five hundred sicca rupees; or for malgoozary land, the annual produce of which might not exceed five hundred sicca rupees; or for lakheraj land the produce of which might not be more than fifty sicca rupees per annum; or any other description of real property, the computed value of which might not be above five hundred sicca rupees. Section 6, Regulation 8, 1794, whereby the decision of the registers was made final in suits for personal property not exceeding twenty-five sicca rupees, was at the same time rescinded; as suits within this amount may sometimes involve questions of a general and important nature, wherein an erroneous decision, not revocable by appeal, might be of serious ill consequence; and it was provided, that an appeal should lie to the zillah and city judges from all decisions passed by their registers, if the appeal be preferred in conformity to the general rules for appeals. The whole of the provisions which have been cited, are, however, superseded by the rules now in force, under

to the registers of the zillah and city courts.

Rescinded, and new rule substituted, by R. 8, 1794.

Alteration respecting appeals from the register's decisions made by R. 36, 1795.

Above provisions extended to Benares by R. 12, and 54, 1795; and re-enacted for ceded provinces in R. 12, 1803, § 6 to 10. New rule enacted for Benares, by R. 10, 1805, § 6, and for ceded provinces in R. 4, 1805, § 16.

Rules now in force, in all the provinces, under enactments of R. 24, 1814.

Section 8. What suits may be referred to the registers.

What fees shall be paid to registers on deciding such suits.

Registers not entitled to any fee on non-suits.

Nor on cases adjusted by razeenamah before the pleadings shall have been read.

But shall receive a certain fee when the razeenamah shall be filed after the pleadings may have been read.

An appeal shall lie to the judge from decisions passed by registers in suits referred to them under this section.

the following enactments of Regulation 24, 1814,<sup>1</sup> in all the provinces dependent on the presidency of Fort William.—

§ 8. “The judges of the zillah and city courts are authorized to refer to their registers, for trial and decision in the first instance, any original depending suits, in which the value or amount of the claim, calculated according to the provisions of Section 14, Regulation 4, 1814, may not exceed five hundred rupees. In the trial of all causes referred to the registers of the zillah and city courts under this clause, they shall be guided by the general provisions in force for the trial of civil suits in the zillah and city courts. *Second.* On all suits referred to registers under the preceding clause, or under the regulations heretofore in force, which may be decided by them subsequently to the 1st of February, 1815, the registers shall be entitled to receive one moiety of the institution fee, or of the amount of the stamp duty, substituted for such institution fee by Regulation 1, 1814. *Third.* Provided however, that the registers shall not be entitled to receive any fee or remuneration on causes, which may be dismissed by them from the non-attendance of the plaintiff, or upon any other ground of nonsuit or default, without a determination on the merits of the suit. *Fourth.* Provided further, that in suits depending before a register, which may be adjusted by razeenamah, previously to the pleadings being completed and read, the register shall not be entitled to any fee; but the whole of the institution fee, or of the stamp duty substituted for such institution fee by Regulation 1, 1814, shall be returned to the party who may have paid the same, or to his legal representative. *Fifth.* If the razeenamah shall be filed after the pleadings have been completed and read, a moiety only of the institution fee, or of the stamp duty substituted for such institution fee, shall be returned to the party who may have paid the same, or to his legal representative; and the register shall be entitled to receive the remaining moiety of such institution fee or stamp duty. *Sixth.* An appeal shall lie to the zillah or city judges from all decisions passed by registers in suits referred to them under this section, provided the appeal be preferred in conformity with the general rules and conditions prescribed for the admission of such appeals.<sup>2</sup>

<sup>1</sup> In Section 4 of this Regulation, it is enacted, that “no person shall be hereafter deemed qualified to hold the office of register of a zillah and city court, or of a provincial court, or of register or deputy register of the sudder dewanny adawlut, unless he shall have obtained a certificate from the Council of the College of Fort William, signifying that he is duly qualified to enter upon the public service, in conformity with the statutes of the College.”

<sup>2</sup> These are the same with the rules prescribed for appeals to the provincial courts; except that by the second clause of Section 3, Regulation 36, 1795, extended to Benares by Section 2, of Regulation 54, 1795, and re-enacted for the ceded provinces in Section 10, of Regulation 12, 1803, it is directed that “the petition of appeal shall be presented within thirty days after the date of the decision, either to the register, or to the judge; but the judge is empowered to admit the appeal, although the petition should be presented after the prescribed time; provided the appellant can show, to his satisfaction, good and sufficient cause for not having filed the petition within the limited period.” It is further provided by the second and third clauses of Section 8, Regulation 26, 1814, that “any party who may be desirous of appealing from a judgment passed against him, subsequently to the 1st February, 1815, by a sudder aumeen, or register, or a judge of any zillah or city court, from which a regular appeal may be admissible under the regulations, shall be at liberty to present his petition of appeal, without an authenticated copy of the decree, to the judge of the zillah or city in which the decision may have been passed. Such petition of appeal shall not be required to contain the specific grounds or reasons of the appeal; but may state shortly that the party, being dissatisfied with the judgment, is desirous of appealing from it. The petition must be written on stamp paper, according to the rules and provisions contained in Sections 13 and 14, Regulation 1, 1814; and must be accompanied by the prescribed security for the eventual costs in appeal. The zillah or city judge, after referring to

*Seventh.* In lieu of the rules contained in Section 8, Regulation 49, 1803, it is hereby declared, that the decrees which may be passed by the zillah and city judges on such appeals subsequently to the 1st of February, 1815, shall be final, whatever may be the amount adjudged or disallowed by them, unless the provincial court should see sufficient reason for admitting a special appeal from such decisions, under the provisions of Section 2, Regulation 26, 1814."

§ 9. "*First.* Exclusively of the ordinary jurisdiction of registers of the zillah and city courts, as explained in the preceding section, the Governor General in Council shall be deemed competent to invest the register of any zillah or city court with special additional powers in the trial and decision of regular civil suits, under the following rules. *Second.* Whenever the accumulation of civil suits, or the arrears of business depending in any zillah or city court, may render it impracticable for the judge of such court to try and determine the suits depending before him with sufficient promptitude and dispatch, and the court of sudder dewanny adawlut may be of opinion, either in consequence of a report from the judge of such zillah or city, or from any other information before them, that the register of such zillah or city court is duly qualified by his experience, industry, and abilities, to be entrusted with the whole or any part of the special powers described in clauses fourth and sixth of this section, the sudder dewanny adawlut shall communicate their sentiments on the subject to government, accompanied by a statement of the number of civil suits of every description depending respectively before the judge and the register of such zillah or city court. *Third.* On the receipt of such report from the sudder dewanny adawlut, or upon any other information before government, it shall be competent to the Governor General in Council to invest such register with the whole or any part of the special powers described in the following clauses of this section; and information shall be communicated in every instance in which such powers may be vested in a register, to the sudder dewanny adawlut, to the provincial court of the division, and to the zillah or city judge. *Fourth.* The register may be specially empowered to try and determine any depending suits in appeal from the original decisions of moonsiffs or of sudder ameens, which the zillah or city judge may think proper to refer to him: the decision of the register on such appeals shall be final, unless the zillah or city judge shall see sufficient reason for admitting a second or special appeal under the provisions contained in Section 2, Regulation 26, 1814. *Fifth.* On suits, which may be referred to a register under the foregoing clause, and which may be decided by him on an investigation of the merits, the register shall be entitled to receive the full amount or value of the institution fee, or of the stamp duty substituted for such fee by Regulation 1, 1814, subject to the provisions contained in clauses third, fourth, and fifth, of the preceding section. *Sixth.* The register may be further specially empowered to try and decide any suits exceeding five hundred rupees in value or amount, originally instituted in the zillah or city courts, which the judge of such court may think proper to refer to him. In the trial of all causes, which may be referred to a register under this clause, or under clause fourth of this section, the register is to be guided by the rules which are prescribed for the trial of similar causes before the judges of the zillah and city courts. *Seventh.* On every suit, which may be referred to a register under the preceding clause, and which may be decided by him on an investigation of the merits, the register shall be entitled to receive a fee of sixteen rupees; but the register shall not be entitled to receive any fee or remuneration on such

And the decision of the judge on such appeals shall be final. Exception.

Section 9. Registers may be invested with further additional powers in the trial of suits. The sudder dewanny adawlut to report to government when such further powers may be requisite.

Mode of granting such powers to a register.

Appeals from the decisions of moonsiffs and sudder ameens may be referred to registers, whose decisions on them shall be final. Exception.

What fees the register shall receive for deciding such suits.

Original suits exceeding 500 rupees in amount may be referred to registers.

What fees the register shall be entitled to receive on deciding such suits on an investigation of the merits.

the decree in the original record of the suit, shall then admit the appeal; provided that the petition of appeal, and the security required, shall have been duly presented, in the mode above prescribed, within the periods limited for the admission of such appeals."

But shall receive no fee in cases of nonsuit; or of adjustment before the pleadings have been read.

To receive eight rupees when the razeenamah may be filed after the proceedings have been read.

An appeal shall lie to the provincial court from decisions passed by registers in such suits.

Processes to a register from a provincial court how to be issued.

And communications from register to provincial court how to be made. Special powers not to be exercised by registers without the previous sanction of government, and such powers may at any time be revoked by the Governor General in Council.

Section 10. Judges may recall suits referred to registers or to sudder ameens.

Section 11. Powers vested in the zillah and city judges with regard to the mode of signing processes and examining witnesses.

And in registers.

suits, which may be dismissed from the non-attendance of the plaintiff, or upon any other ground of nonsuit, or default, without a determination on the merits of the suit. *Eighth.* When a suit referred to a register under clause sixth of this section, may be adjusted by razeenamah previously to the pleadings being completed and read, the register shall not be entitled to receive any fee; but the whole of the institution fee, or of the stamp duty substituted for such fee, shall be returned to the party who may have paid the same, or to his legal representative. *Ninth.* If the razeenamah shall be filed after the proceedings are completed and read, a moiety of the institution fee, or of the stamp duty substituted for such fee, shall be returned to the party who may have paid the same, or to his legal representative, and the register shall be entitled to receive a fee of eight rupees from the amount of the remaining moiety. *Tenth.* From all decisions passed by a register on suits referred to him under clause sixth of this section, an appeal shall lie to the provincial court in the same manner, and under the same provisions, as if such suits had been tried and determined in the first instance by the zillah or city judge. *Eleventh.* In cases, in which an appeal may lie to the provincial court from the original decision of a register under clause sixth of this section, as well as in all cases in which a provincial court may have occasion to issue process regarding causes decided by or depending before a register, such process shall be transmitted to the judge of the zillah or city, who shall forward the same to the register; or shall himself comply with the exigency of it, if from absence or any other sufficient cause the register may be prevented from doing. In like manner all returns and communications from a register to a provincial court, or to any other court, authority, or office, shall be made through the judge of the zillah or city in which such register may be employed. *Twelfth.* Upon the death, removal, or resignation of any register, who may have been invested with special powers under the provisions of this regulation, the person succeeding to the office of register shall in no case be entitled to exercise such special powers without the previous sanction of the Governor General in Council; and it shall at all times be competent to the Governor General in Council to revoke the special powers, which may have been entrusted to the register of a zillah or city court under this section, either in consequence of the arrears of depending business having been sufficiently reduced, or for any other cause, which in the opinion of the Governor General in Council may render the adoption of that measure expedient." § 10. "The judges of the zillah and city courts are at all times authorized to recall from the registers, and from the sudder ameens, any depending suits, which may have been referred to them under the present or former regulations, and which, for the more speedy administration of justice, or for any other reason, the zillah or city judges may deem it proper to determine themselves in the first instance, or to refer to any other competent authority." § 11. "*First.* The judges of the zillah and city courts are authorized to employ their registers and assistants in signing and issuing any process of court, to which the signature of the judge may not be specially required by any regulation. They are further authorized to employ their registers and assistants, or any of their principal native officers, in taking down the depositions of witnesses, whom they may not have time to examine *vivâ voce* themselves; provided, that such depositions be taken in open court in the presence of the parties, or their authorized pleaders, whose attestations shall be subscribed to all depositions so taken in testimony of their having been present; and if any question or dispute shall arise in taking the deposition of a witness so examined, the judge shall, as soon as may be practicable, enquire into the question, and shall pass such order as may appear to him to be proper. *Second.* The registers of the zillah and city courts may in like manner cause

the depositions of witnesses, in suits referred to them, to be taken before their assistants, or before any of their principal native officers, whenever the adoption of that measure may appear to be indispensably necessary for the speedy determination of such suits." § 12. "First. Such parts of the rules in force

as require that the registers of the zillah and city courts shall hold their sittings for the trial of civil suits referred to them in the court house of the zillah or city dewanny adawlut, and that all process, which it may be necessary to issue in such suits, shall be issued under the seal of the zillah or city court, and be executed by the officers of that court, are hereby declared subject to the following modifications. *Second.* It shall be competent to the Governor General in Council to appoint one or more registers in any zillah or city court, in addition to the person holding that office under the established constitution of the courts. Such additional registers shall be denominated second, or third register, and shall possess the same powers and perform the same duties as the registers to the zillah and city courts under the regulations in force, and the following provisions of this section. *Third.* It shall further be competent to the Governor General in Council to station the register or registers at any place or places within the jurisdiction of a zillah or city court of dewanny adawlut, and whenever a register may be stationed at any place, not being the sudder station of the zillah or city court, the sittings and proceedings of such registers shall be held in a convenient and open court room to be provided for that purpose at such place as government may direct. *Fourth.* When a register may be stationed at any place, not being the station of the zillah or city dewanny adawlut, all process, which it may be necessary to issue in suits referred to, or in matters cognizable by, such register, shall be issued under the official seal and signature of the register, and shall be executed by the officers specially appointed for that purpose, in concurrence with the officers of the zillah or city court, in cases in which their aid may be requisite. *Fifth.* The judges of the zillah or city courts, and the public officers acting under them, are required to aid and support the execution of any process which may be issued by the registers in the mode prescribed; and any disobedience or resistance to process so issued is hereby declared to be liable to the same penalties, as disobedience or resistance to the process of a zillah or city court. *Sixth.* The judicial powers of a register, who may be stationed at a place not being the station of the zillah or city dewanny adawlut under the provisions of this section, shall be the same as those of the registers employed at the station of the zillah or city courts, viz. to try and decide according to the regulations in force any suits or matters, which may be referred to them by the zillah or city judges, and which may be cognizable by such registers, either in their ordinary jurisdiction, or under the special powers with which they may be vested in conformity with Section 9, of this regulation. *Seventh.* Provided however, that it shall be competent to the Governor General in Council, to invest any register, who may be stationed under the provisions of this regulation at a place not being the station of the zillah or city dewanny adawlut, with original jurisdiction within local defined limits, in the cognizance and trial of summary suits for the recovery of arrears of revenue, and in all other cases in which a summary action is allowed by the regulations in force. *Eighth.* In receiving and trying such summary suits, the register

Section 12.  
Rules requiring registers to hold their courts at the sudder station of the zillah or city modified

Additional registers may be appointed in zillah or city jurisdiction.

Registers may be stationed at other places than at the fixed station of the zillah or city court.

Register's processes how to be issued in such cases.

Penalty for disobedience to the process of a register in such cases.

What powers shall be vested in a register so stationed.

Proviso with regard to summary suits.

Rules for receiving and trying such summary suits.

<sup>1</sup> The registers stationed in conformity with this section being frequently authorized to exercise the powers of joint magistrate in several contiguous districts, the following additional provisions were enacted in Regulation 2, 1815. s 2. "It shall be competent to the Governor General in Council to extend the original jurisdiction, which may be vested in a register, with regard to the cognizance and trial of summary suits under clause seventh, Section 12, Regulation 24, 1814, to those portions of other districts,



What regular suits shall be generally referred to registers stationed at any other place than the sudder station of the zillah or city. Reports to be furnished by registers so stationed.

Through what channel the correspondence of such registers shall be conducted.

Instructions to be furnished by the sudder dewanny adawlut in cases not provided for by regulations.

Further provisions enacted in Regulation 9, 1819.

shall possess the same authority, and shall proceed in the same manner, as if the case had been referred to him by the zillah or city judge. The decisions of the register on such suits shall be appealable or not, according to the established rules for appeals, which may be applicable to the case. *Ninth.* In referring regular civil suits or appeals for trial and decision to a register, stationed at any other place than the fixed station of the zillah or city dewanny adawlut, and who may also have been entrusted with a local jurisdiction as joint or assistant magistrate, the judge shall generally select, in preference to others, depending suits or appeals, in which the cause of action may have arisen, or the parties may reside, within the local jurisdiction entrusted to such register in his capacity of joint or assistant magistrate. *Tenth.* The monthly, half yearly, or other periodical reports, which are prescribed by the regulations, shall be furnished by such registers to the judges of the zillah or city courts, in whose jurisdiction they may be employed, in order that such reports may be incorporated with those which the zillah and city judges are required to furnish to the provincial courts, and to the sudder dewanny adawlut. *Eleventh.* All official correspondence or communications addressed by such registers to the courts of justice, or to other public authorities, shall be transmitted through the channel of the respective judges of the zillah or city courts, except in instances, which may appear to require immediate dispatch. But in all cases in which such registers may find it necessary to transmit any official communication to a court or other public authority, in any other mode than through the zillah or city judge, they shall forward a copy of such communication, with as little delay as possible, for the information of the zillah or city judge. *Twelfth.* In all matters of form or practice, relative to the proceedings of a register stationed at any place not being the fixed station of the zillah or city court, under the foregoing provisions, for which no express rule may be prescribed in this or any other regulation, the register shall be guided by the instructions of the court of sudder dewanny adawlut."

The following further provisions for facilitating the trial of appeals from decisions of registers, and for empowering the zillah and city judge to refer original civil suits, not exceeding, in amount or value the sum of five hundred rupees, to the register of the provincial court of the division, are enacted in Regulation 9, 1819.

in which such register may be authorized to exercise the powers of joint magistrate." § 3. "The provisions contained in clauses fourth, fifth, eighth, and twelfth, Section 12, Regulation 24, 1814, shall be considered to be equally applicable to summary suits cognizable by a register under the original jurisdiction, which may be vested in him in conformity with the preceding section, as to those which he may be authorized to receive and try under clause seventh, Section 12, Regulation 24, 1814." § 4. "It shall be the duty of the register to transmit, at such times as may be found convenient, the original proceedings held by him in the trial of summary suits under Section 2, of this regulation, together with the usual periodical reports regarding such suits, to the judge of the zillah or city within whose jurisdiction such summary suits may have originated."

Under the provisions cited from the ninth and twelfth sections of Regulation 24, 1814, for the appointment of additional registers to the zillah and city courts, investing them with special powers, and stationing them at any place within the local jurisdiction in which they may be employed, it was deemed unnecessary to continue the office of assistant judge, which had been established for the more speedy investigation and decision of civil causes, in some of the zillah and city courts, under the second, third, and fourth sections of Regulation 49, 1803; as stated in the first edition of this Analysis; page 98. It was therefore enacted by Section 3, of Regulation 24, 1814, that "from and after the 1st of February, 1815, the office of assistant judge in the zillah and city courts shall be abolished."

§ 8. "First. In addition to the special powers which, under the provisions of Section 9, Regulation 24, 1814, may now be conferred upon zillah and city registers, it is hereby further provided, that it shall be competent to the Governor General in Council, on the recommendation of the sudder dewanny adawlut, to invest any person exercising the functions of a register of a zillah or city court, with powers to try and determine depending appeals from decisions which may have been passed by another register, on the class of suits specified in Section 8, of the regulation abovementioned. The zillah and city judges are hereby authorized to refer to registers so empowered any suits of the description above adverted to, and such registers will be entitled to the same fees as they would have received, had the suits in question been tried by them in the first instance. Second. No person however shall be vested with the power in question, who may not have been employed in the judicial department for a period of at least six years; nor shall he be competent to try such appeals except in cases in which the original decision may have been passed by a register junior in the service, to the individual on whom the special power in question may be conferred. Third. The provincial courts are empowered to admit a second or special appeal, from the decisions which may be passed by registers under the foregoing clauses of this section, and such special appeals are to be admitted and tried in the same manner as other special appeals, cognizable by the provincial courts." § 9. "The judges of the zillahs and cities, within whose jurisdiction the cutcherries of the provincial courts may be respectively situated, are hereby authorized to refer to the register of such provincial court, any original civil suits cognizable by the zillah and city registers, under Section 8, Regulation 24, 1814, and which may be now or hereafter depending in the zillah or city courts. In the trial of such suits, the registers of the provincial courts will exercise the same powers, and will be guided by the same rules, as those which are applicable to the zillah and city registers generally; and they will also be entitled to the same fees, on the decision of suits, as the zillah and city registers; but they will be careful that the trial of such suits be not allowed to interfere with their primary duties as registers of the provincial courts."

Section 8. Judges of zillah and city courts empowered to refer to their registers appeals from decisions of other registers, in certain cases.

Qualification necessary to enable them to decide on such appeals.

Prohibition against their hearing appeals in cases decided by their seniors in the service. Provincial courts empowered to admit and decide on such special appeals.

Section 9. Zillah and city judges empowered to refer suits cognizable by their registers to the registers of provincial courts.

Such suits not to interfere with their duties as registers of provincial courts.

### *Courts of Native Commissioners.*

For the further relief of the judges of the zillah and city courts, in the trial of petty suits for personal property; as well as to save the parties and witnesses in such suits from the inconvenience to which they would be subjected by the necessity of attendance at the court of the zillah or city, if this were the only local tribunal; and to promote, by additional subordinate judicatures, the general speedy administration of civil justice; native commissioners were appointed in each zillah and city jurisdiction, to try, in the first instance, suits for money, or other personal property, not exceeding fifty rupees, under the provisions of Regulation 40, 1793; extended to Benares, with modifications, by Regulation 31, 1795; and re-enacted, with amendments, for the ceded provinces, in Regulation 16, 1803. By Section 26, of the regulation last mentioned (re-enacted for the lower provinces and Benares, in Section 9, Regulation 49, 1803) the court of sudder dewanny adawlut were also empowered to sanction the appointment of head native commissioners in any city or zillah, wherein such appointment might appear to the court advisable, for the trial of suits referred to them by the judge, for personal property not exceeding in amount or value one hundred sicca rupees; or the property or possession of land, the annual produce of which, if malgoozary, might not be above one hundred sicca rupees; or more than ten sicca rupees, if lakheraj;

Native commissioners, for the trial of petty suits, for money and personal property, appointed under R. 40, 1793, extended to Benares, with modifications, by R. 31, 1795; and re-enacted, with amendments, for ceded provinces, in R. 16, 1803. And provision made for appointment of head native commissioners in Section 26, R. 16, 1803; re-enacted for the lower provinces and

Benares, in  
Section 6, R.  
49, 1803.  
Further provisions  
in Regulation  
15, 1805.

But the whole  
of these Regu-  
lations re-  
scinded, or su-  
perseded, by  
R. 23, 1811.  
Rules now in  
force under  
that Regula-  
tion.

Section 6.  
New establish-  
ment of moon-  
siffs to be sub-  
mitted to the  
provincial  
courts by the  
zillah and city  
judges.

Jurisdictions  
of moonsiffs to  
correspond  
with police ju-  
risdictions.  
Measures to be  
adopted by  
zillah and city  
judges, when  
the number of  
moonsiffs em-  
ployed shall be  
greater or  
smaller than  
that of the  
police ju-  
risdictions.  
Former sun-  
nuds to be can-  
celled and new  
sunnuds to be  
granted to moon-  
siffs, when the pre-  
scribed ar-  
rangements  
shall have  
been sanction-  
ed by the pro-  
vincial courts.

or for any other description of real property, the computed value of which might not exceed one hundred sicca rupees. Further provisions were made by Regulation 15, 1805, for constituting the Mahomedan and Hindoo law officers of the zillah and city courts, sudder ameens, or head referees, by virtue of their offices; and for enabling the court of sudder dewanny adawlut to authorize the appointment of more than one head native commissioner, in addition to the law officers, whenever it might appear expedient, on consideration of the number of civil causes depending in any zillah or city court. The whole of the regulations abovementioned, as well as other subsidiary rules connected with the office of native commissioners, are however rescinded or superseded by the following rules now in force under Regulation 23, 1814, entitled "A regulation for reducing into one regulation, with amendments and modifications, the several rules which have been passed regarding the office of moonsiffs or native commissioners, and of sudder ameens or head commissioners; for modifying and extending their respective powers in the trial and decision of civil suits; and for authorizing them to discharge certain additional duties under the direction of the zillah and city judges."

§ 6. "*First.* The judges of the several zillahs and cities shall, on the receipt of this regulation, prepare and submit to the provincial court a new establishment of moonsiffs, whose local jurisdictions shall be so arranged as to correspond exactly with those of the thannahs or local police jurisdictions. They shall at the same time report to the provincial court the name of the town or village in each jurisdiction, which may be most central, or otherwise most conveniently adapted for the establishment of each moonsiff's cutcherry. *Second.* The jurisdiction of the moonsiffs shall have the same local denomination as that of the corresponding police jurisdiction. *Third.* If the number of persons now holding the office of moonsiff in any zillah or city should exceed that of the police jurisdictions, the judge shall select from them those individuals, of whose capacity and integrity he entertains the most favorable opinion. But if the number of moonsiffs should be less than that of the police jurisdictions, the judge shall select such an additional number of persons for the office of moonsiff as may be necessary: in both instances he shall report the grounds of his selection to the provincial court with reference to the provisions of Section 8, of this regulation. *Fourth.* When the selection of moonsiffs for each zillah or city, and the places in which their respective cutcherries are to be held, shall have been approved by the provincial court, the whole of the sunnuds, which may have been formerly granted to moonsiffs shall be recalled and cancelled; and new sunnuds, drawn up according to the form No. 1,<sup>1</sup> shall be furnished to all those, whose appoint-

<sup>1</sup> *Form of Sunnud to be granted to persons appointed to the office of Moonsiff.*

"I, A. B. judge of the zillah or city of \_\_\_\_\_ in virtue of the powers vested in me by Regulation 23, 1814, do hereby appoint you C. D. to the office of moonsiff of \_\_\_\_\_ with the same local jurisdiction as that of the police jurisdiction of \_\_\_\_\_ you are to hold your cutcherry at \_\_\_\_\_ and are to affix this sunnud or a copy of it, duly authenticated, in some conspicuous place in the cutcherry. Under the rules now in force, you will receive the remuneration to which you may be entitled for the trial and decision of suits from the zillah or city court; and you are not entitled to receive any institution or other fee, any deposit or sum of money, or valuable consideration from any parties, or other persons, on account of the institution or trial, the proceedings, process, or decision, of any suit before you. You are not empowered to take or demand any security, to levy any fine, or to execute any decree, without the previous sanction and orders of the zillah or city court in each instance. You are to hear and determine all suits cognizable by you, and to execute all other duties entrusted to you in your capacity of moonsiff, in strict

ments may be confirmed and sanctioned by the provincial court under the preceding clause. *Fifth.* The offices of those moonsiffs, whose appointments under the first part of clause third of this section will be no longer necessary, shall be abolished; and the zillah and city judges shall adopt the necessary measures for transferring the papers and proceedings in depending causes to the jurisdictions of those moonsiffs, to which they may respectively appertain."

§ 7. "The provincial courts are empowered to include two or more civil police jurisdictions within that of one moonsiff, and to abolish any of those offices whenever local or special circumstances may in their judgment render it expedient: they are further at all times authorized to cause the cutcherry of a moonsiff to be removed from the town or village in which it may be held, to any other town or village within the limits of the same moonsiff's jurisdiction, which may appear more convenient." § 8. "*First.* In the future nomination of individuals for the office of moonsiff, the zillah and city judges are not restricted to any particular classes or descriptions of persons, provided that they are either of the Hindoo or Mahomedan persuasion; but are required generally to select, in preference to other individuals, such of the pergunnah or city cazees as may appear to be duly qualified for the trust. *Second.* The zillah and city judges shall communicate to the provincial court such information as they may have obtained regarding the age, capacity, character, education, and past employments of any person, whom they may recommend for the office of moonsiff; and no person shall be authorized to officiate as moonsiff without the previous sanction of the provincial court." § 9. "*First.* Whenever a zillah or city judge shall see cause for the removal of a moonsiff on the ground of any misconduct, neglect of duty, incapacity or other disqualification, the judge shall report the circumstances of the case with his opinion on the subject, to the provincial court, who will pass such order on the report as may appear to be proper, or will call for any additional information, or direct any further enquiry, which the nature and circumstances of the case may require. *Second.* Whenever a moonsiff may be guilty of exaction, or of any other gross act of misconduct, the judge is authorized to suspend him from his office; but in such instances it shall be the duty of the judge to report the circumstances of the case without delay, for the information and orders of the provincial court. *Third.* In other cases of misconduct and neglect of duty, which may not be of a nature to require either the suspension or dismissal of a moonsiff from his office, the judge is authorized to impose on the moonsiff a fine not exceeding twenty rupees in amount; and the order of the judge in such cases shall be final. *Fourth.* No moonsiff shall be removed from his office unless the provincial court shall be satisfied that there is sufficient cause for his removal." § 10. "*First.* Moonsiffs shall be liable to an action in the civil court for corruption in the discharge of their trust, or for extortion, or for any oppressive or unwarranted act of authority; and upon proof of the charge to the satisfaction of the judge, he shall cause the offender to pay such damages and costs to the party injured as may appear to be equitable. *Second.* Moonsiffs shall also be liable to a criminal prosecution for corruption, extortion, or other misdemeanor committed by them in the discharge of any part of their duty; and on conviction before the court of circuit shall be subject to fine and imprisonment proportionate to the nature and circumstances of the case; but no moonsiff shall be liable to be prosecuted for want of form or for error in his proceedings or judgments; nor shall any process be issued against a moonsiff, who may be charged with corruption, extortion, or any oppressive and unwarranted act of authority, unless

conformity with the rules prescribed in the regulations now in force, or which may hereafter be enacted."

Papers and proceedings belonging to the offices of the civil police

Section 7. Districts vested in the provincial courts regarding the local jurisdiction of moon siffs.

Section 8. What persons are to be selected by zillah and city judges for the office of moon siff.

Section 9. Mode of proceeding for the removal of moonsiffs from office

Judges of zillah and cities authorized in certain cases to suspend moon siffs from their office

Moonsiffs not liable to dismiss except by provincial courts.

Section 10. Moonsiffs may be sued for corruption in the civil courts and are liable to costs and damages

Moonsiffs may be prosecuted criminally in the courts and are liable to imprisonment and fine on conviction

Section 11.  
Persons here-  
after appoint-  
ed to the office  
of moonsiff to  
be furnished  
with a sunnud  
and to take  
and subscribe  
an oath or so-  
lemn declara-  
tion according  
to prescribed  
forms.

Section 12.  
Copy of sun-  
nud to be fur-  
nished to  
moonsiffs and  
to be affixed in  
their cutcher-  
ries.

Section 13.  
What suits  
may be tried  
by moonsiffs.

Moonsiffs pro-  
hibited from  
trying suits in  
which certain  
classes of per-  
sons may be  
parties.  
And from ad-  
mitting per-  
sons to sue as  
paupers.

Section 14.  
Suits to be  
tried by the  
moonsiffs  
themselves in  
a public cut-  
cherry, and  
under what  
rules.

Section 15.  
What persons  
may act as va-  
keels in the  
courts of the  
moonsiffs.

the judge shall be previously satisfied by sufficient evidence, that there is rea-  
son to believe the charge to be well founded." § 11. "Every person who  
may in future be appointed to the office of moonsiff, will be furnished by the  
judge with a sunnud drawn up according to the form No. 1. and previously  
to entering upon the duties of his office, he shall take and subscribe an oath  
according to the form prescribed in No. 2." The judge however is empow-  
ered in all cases in which he may deem it expedient, to exempt such moonsiff  
from taking the oath, and to cause him to subscribe a solemn declaration to  
the same effect." § 12. "Whenever a sunnud may be granted to a moonsiff  
under the preceding section, a copy of it under the official seal and signature  
of the judge shall also be delivered to him, in order that it may remain per-  
manently affixed in some conspicuous place in his cutcherry." § 13. "*First.*  
The persons who may be invested with the powers of moonsiff under this  
regulation, are empowered to receive, try, and determine, all suits preferred  
to them against any native inhabitant of their respective jurisdictions, for  
money or other personal property, not exceeding in amount or value, the  
sum of sixty-four sicca rupees, provided that the cause of action shall have  
arisen within the period of one year previously to the institution of the suit,<sup>2</sup>  
and that the claim include the whole amount of the demand arising from  
such cause of action; and provided further, that the claim be really for money  
due, or for personal property or for the value of such property; and be not  
for damages on account of alleged personal injuries, or for personal damages  
of whatever nature. *Second.* The moonsiffs are prohibited from hearing,  
trying, or determining any suits, in which they themselves, or their relatives,  
or dependants, or the vakeels, or other persons employed in their cutcherries,  
may be parties, or in which a British subject, or an European foreigner, or  
an American may be a party. *Third.* They are further prohibited from re-  
ceiving or trying any suits, which persons may desire to prefer to them in  
*forma pauperis.* § 14. "Moonsiffs are themselves to investigate the suits  
cognizable by them in a public cutcherry, or court room, and are not to  
allow their officers, servants, or dependants, or any other person to interfere  
therein. In receiving, trying, and determining suits, they shall be guided by  
the rules prescribed in the following sections, and in points not expressly pro-  
vided for in this regulation, they shall observe as nearly as may be practicable  
the rules prescribed in the regulations for the guidance of the zillah and city  
courts in the trial and decision of civil suits." § 15. "*First.* No person  
shall be allowed to plead or act as a vakeel in the court of any moonsiff, un-  
less he be a relative, servant, or dependant of the person, for whom he may  
be appointed to act; or unless he shall have received a sunnud of appoint-

<sup>1</sup> *Form of Oath to be administered to persons appointed to the office of Moonsiff.*

"I, A. B. appointed to the office of moonsiff of do solemnly  
swear, that in the trial and determination of all suits, which may come under my cog-  
nizance, and in the execution of all the other duties of my office, I will act according  
to the best of my abilities and judgment, without partiality, favor, or affection; that I  
will not directly or indirectly receive, or knowingly allow any other person to receive,  
any money, effects, or property, on account of any suit that may come before me for  
decision, or on account of any public duty which I may have to execute. I will strictly  
adhere to all the rules prescribed for my guidance, and I will in all respects truly  
and faithfully execute the trust reposed in me."

<sup>2</sup> By Section 12, Regulation 19, 1817, the period is extended to three years; and it  
is declared that after the promulgation of that regulation, "it shall be competent to  
moonsiffs, appointed under the provisions of Regulation 23, 1814, to receive, try, and  
determine any suit cognizable by them, the cause of action in which may have arisen  
within three years antecedent to the institution of the suit."

ment from the zillah or city judge. *Second.* If in any instance it appear to be essentially necessary that vakeels be appointed to attend the pleading of causes before any of the moonsiffs, the zillah and city judges are authorized to appoint a sufficient number of persons of good character and duly qualified, and to grant to them sunnuds drawn up according to the form No. 3. The zillah and city judges are enjoined not to exercise the discretion vested in them by this clause of appointing vakeels to the moonsiff's courts, unless they shall be satisfied of the expediency or necessity of that measure. *Third.* The vakeels so appointed shall be sworn to a faithful discharge of their duties; and shall be liable both to a civil action, and a criminal prosecution, for all breaches of trust, fraud, or acts of wilful misconduct, committed by them in their capacity of vakeels. They shall not however be removed from their offices without proof to the satisfaction of the judge, of misconduct, or of incapacity, or of gross profligacy, or misbehaviour, or unless the judge shall consider it inexpedient to continue the number of vakeels appointed; in which case he is at all times authorized to recal and cancel the sunnuds granted to them. *Fourth.* The vakeels who may be appointed under this section are left to settle with their constituents the fees to be paid to them for the pleading of causes, and for all other acts that may be performed by them. The amount of the fees which may be voluntarily agreed upon, shall be specified in the vakalutnameh; which shall be written on the prescribed stamp paper; and the moonsiff may include the same (or any part thereof which may appear reasonable) in his judgment against the party cast. *Fifth.* The moonsiffs are carefully to prevent persons from acting as vakeels in their respective cutcherries, who may not be relatives, servants, or dependants of the parties in causes before them; or may not have received sunnuds to act as vakeels from the judge of the zillah or city in which they may be employed." § 16. "In suits instituted before any moonsiff in conformity with Section 13, of this regulation, no institution fee shall be levied from the plaintiff; but the following stamp duties shall be levied in lieu thereof, in conformity with the provisions contained in Regulation 1, 1814; viz. if the sum of money or value of personal property claimed shall not exceed sixteen sicca rupees the plaint or petition shall be written on stamp paper of one rupee. If above sixteen, and not exceeding thirty-two rupees, two rupees. If above thirty-two, and not exceeding sixty-four rupees, (which is the highest sum cognizable in suits before a moonsiff) four rupees." § 17. "The plaint shall state precisely the grounds of complaint, the time when the cause of action arose, the name and residence of the person or persons complained against, the total sum of money or amount of personal property claimed, and all material circumstances, which may elucidate the transaction, and may tend to bring the matter in dispute to a distinct issue." § 18. "It shall be the duty of the moonsiff to restrain and discourage as much as possible the insertion in the plaint of irrelevant matter, and of terms of abuse and reproach against the character of the defendants or others. The plaint shall be signed and numbered, and dated in the order in which it may be received by the moonsiff; and the number of the suit, the names of the

Zillah and city judges may appoint vakeels in the courts of the moonsiffs. Such vakeels to receive sunnuds in a prescribed form.

To be sworn to the faithful discharge of their duty; And liable in certain cases to a civil action and criminal prosecution.

May be removed from their offices by the judge under certain circumstances. Vakeels are to settle with their constituents the amount of the fees to be received by them.

Such fees to be specified in the vakalutnameh.

Moonsiffs are to prevent unauthorized persons from acting as vakeels in their cutcherries.

Section 16. Stamp duty to be levied on the institution of suits before moonsiffs in lieu of the former institution fee.

Section 17. What matters are required to be stated in the plaint.

Section 18. The insertion of irrelevant matter and terms of abuse in the plaint to be restrained and discouraged.

Plaint to be signed, numbered, and dated.

*i Form of Sunnud to be granted to persons who may be appointed to officiate as vakeels in the cutcherries of the Moonsiffs.*

"I, A. B. judge of the zillah or city of \_\_\_\_\_ do hereby appoint you C. D. to act in the capacity of vakeel in the cutcherry of the moonsiff of \_\_\_\_\_

You will not be liable to be removed from your office, unless the judge of the district or city of \_\_\_\_\_ in consequence of misconduct on your part, or of there being no longer any necessity for your being employed in the capacity of vakeel, shall deem it proper to recal and cancel this sunnud."

And to be inserted according to a prescribed form in a book to be kept for that purpose.

Section 19.  
What notice to be served on the defendant.

To whom the notice is to be delivered.

And how it is to be served.

Section 20.  
Notice how to be served on weavers and other persons employed in certain departments on account of government.

parties, the date on which the petition is received, the amount claimed, and the subject matter of the suit, shall be carefully entered in a book, to be kept by the moonsiff according to the form No. 4; two blank columns shall be left in the book, in the first of which shall be inserted the date of the decision and an abstract of the final order passed in each suit, showing whether the claim be decreed in whole or in part, or nonsuited, or adjusted by razeenameh, or dismissed on investigation of the merits, or otherwise disposed of, and the amount of the costs adjudged against either or both of the parties. In the second blank column shall be inserted, the date on which the copies of the decrees may be furnished or tendered to the parties. With a view to ascertain that the register books are regularly kept in the manner above prescribed, and that depending suits are brought to a hearing according to their order on the file, the zillah and city judges are respectively required to inspect them once at least in each year; and for this purpose shall require the several moonsiffs to transmit them to the court, either during the period of the Dussera or Mohurrem vacation as may be most convenient." § 19. "First. When the complaint shall have been thus received and entered in the book according to the prescribed form, the moonsiff shall cause to be served on the defendant a written notice under his seal and signature, containing only the number of the suit, the names of the parties, and a short statement of the demand, and requiring the defendant to attend in person or by vakeel, and to deliver an answer to the plaint on or before a certain day, which must be specified in the notice. *Second.* The moonsiff shall deliver the notice to the plaintiff or to his vakeel; and the plaintiff may either himself serve the notice on the defendant, or through any other person whom he may choose to employ for that purpose. Provided however, that the name of the person intended to be employed in this duty be in all cases endorsed on the notice by the moonsiff, previously to its being delivered to the plaintiff or his vakeel for execution. *Third.* The person, through whom this notice may be served, shall require from the defendant a written acknowledgment, to be endorsed on the back of the notice, signifying that it has been duly served upon him; and he shall further cause some of the defendant's neighbours, or any mundul or putwarce or other principal inhabitant of the village, or the mohulladar of the ward, to witness the due execution of the service; and he shall at all times state in his report, the name or names of such witness or witnesses." § 20. "When the defendant may be a weaver, or a person employed in the provision of the Company's investment under the commercial residents, or in the provision of salt or opium in those departments, the notice above prescribed shall be enclosed within a sealed cover, addressed to the resident or agent, or to the assistant, or to the gomastah, ameen, or head officer of the nearest aung, kothee, or

<sup>1</sup> Form of a Register Book of suits, instituted before moonsiffs, or referred to sudder ameens.

Number of the suit.	Date of its institution or reference.	Names of the parties.	Amount and subject of the claim.	Date and abstract of the final order.	Date on which copies of the decree were furnished or tendered to the parties.
No. 1.	2d of February 1815.	Ramechund Paul, vs. Paunchoo Gope.	Debt on Bond 37 Rs.	20th of March, 1815, Decreed in favor of the plaintiff 33 Rs. principal, and 2 Rs. interest. Defendant to pay costs 4 Rs. 6 Ans. Total 39 Rs. 6 Ans.	24th of March, 1815. One copy furnished to the plaintiff himself, and another to the vakeel of the defendant.

choukee, subordinate to them, and shall be superscribed with the official seal and signature of the moonsiff. The resident, or agent, or his assistant, or head native officer, shall cause the notice to be duly served and acknowledged by the defendant, and shall then return it to the moonsiff." § 21. "*First.* If a defendant, who may have been served with a notice as directed in the two preceding sections, shall not appear in person, or by vakeel, within the time specified; or if having appeared, he shall refuse to answer the plaint; the moonsiff shall proceed to try the cause *ex parte*, and after examining the plaintiff's evidence in support of his claim, shall give judgment in the same manner as if the defendant had appeared and answered to the plaint. *Second.* It shall however be the duty of the moonsiff, previously to trying the case *ex parte*, to make such enquiries from the person who served the process, and from the persons who witnessed such service, as may satisfy his mind, that the notice was duly served on the defendant." § 22. "*First.* In cases in which a defendant, to whom a notice may have been issued in conformity with the preceding sections, may abscond or conceal himself, or cannot after diligent search be found, or shall refuse to give the required written acknowledgment, the person entrusted with the execution of the process, shall certify the same on the back of the notice, and shall require some person or persons being neighbours of the defendant, or a mundel, or a putwaree, or other principal inhabitant of the village, or a mohalladar of the ward, in which the defendant may usually reside, to certify on the back of the process, that after diligent search the defendant cannot be found, or that he has refused to give the required written acknowledgment. *Second.* When a return to this effect is made, the moonsiff shall cause a proclamation, written in the current language and character of the country, to be affixed in a conspicuous part of his own cutcherry, and a copy of the same on the outer door of the defendant's usual place of residence, or some other conspicuous place near it. The proclamation shall contain a copy of the original notice, and shall state that if the defendant do not appear in person, or by a vakeel, within the period of fifteen days from the date of the proclamation, the suit will be brought to a hearing and determination, without the appearance or answer of the defendant. *Third.* If the defendant shall still not appear either in person or by vakeel, the moonsiff, on the expiration of the period limited in the proclamation, shall proceed to try and determine the suit *ex parte*, with the same precautions, and in the same manner, as is prescribed in clause second, Section 21, of this regulation." § 23. "In suits depending before them, the moonsiffs are hereby strictly prohibited from requiring security (either mal or hazir zaminee) from the defendants, or from attaching their property. But if the moonsiff shall be satisfied by sufficient proof, that the defendant intends to abscond and to withdraw himself from the jurisdiction of the court, or that he means to dispose of the property in his possession for the purpose of avoiding the execution of an eventual judgment against him, the moonsiff shall report the circumstances of the case to the judge, who will exercise his discretion in each instance, and pass such orders as may appear necessary, under the provisions contained in Sections 4, and 5, Regulation 2, 1806. The judge may cause those orders to be executed either by the moonsiffs, or by the proper officers of his own court, as may appear most convenient." § 24. "When the defendant shall attend either in person or by vakeel, within the period limited in the notice or proclamation, or at any subsequent period before the plaintiff's evidence or proofs shall have been received in the case, he shall be allowed to take a copy of the plaintiff's petition, and to file his answer to the complaint." § 25. "*First.* It shall be the duty of the moonsiffs to restrain and discourage, as much as possible, the insertion in the answer of any matter evidently irrelevant to the suit, and of terms of abuse and reproach against the cha-

Section 21.  
Under certain circumstances the cause may be tried *ex parte*.

But moonsiffs required to ascertain that the notice was duly served on the defendant.

Section 22.  
The absence of the defendant or his refusal to acknowledge the service how to be certified.

Proclamation to be issued after it shall have been certified that the defendant cannot be found or has refused to acknowledge the service. What the proclamation shall contain.

If the defendant shall fail to attend within the period limited in the proclamation, the suit is to be tried *ex parte*.

Section 23.  
Moonsiffs prohibited from requiring security from defendants. Moonsiff to report to the judge if the defendant means to abscond or to dispose of his property.

Section 24.  
Defendant to file an answer to the plaint if he shall appear at any time before the plaintiff's evidence shall have been received.

Section 25.  
Moonsiffs to prevent the insertion in the answer of irre-



levant matter and abusive terms.

In what cases the plaintiff may be permitted to file a reply.

What is to be contained in the reply.

When the rejoinder is to be filed, and what it is to contain.

The answer, reply, and rejoinder, not to be on stamp paper.

On the occurrence of any unauthorized delay in filing the reply or rejoinder, the trial of the suit not to be postponed on that account. Section 26. Suits to be tried according to their order on the file.

Proviso.

Section 27.

Notice to be affixed in the cutcherry, if either of the parties shall be absent

when the suit is first called over for trial.

Mode of proceeding if notwithstanding such notice either of the parties may fail to attend.

Proviso for cases which may be dismissed without an investigation of the merits. Section 28.

Rules for the trial of suits depending before moonsiffs.

acter of the parties or other persons. *Second.* If the answer of the defendant shall be a simple admission or denial of the matter contained in the plaint, no further pleading shall be necessary in suits before the moonsiffs; but if the answer shall contain any plea or allegation, which may require a reply on the part of the plaintiff, in order to bring the matter in dispute to a distinct issue, or to which the plaintiff may be desirous of replying, such reply shall be filed on the next court day after that on which the defendant may have given in his answer. The plaintiff shall not introduce in his reply any matter not contained in his complaint. He shall either acknowledge the answer of the defendant to be true, or simply and shortly deny the truth of such of the facts in the answer as he intends to dispute, or simply deny the truth of the facts contained in it, or the competency of the answer. *Third.* The defendant shall rejoin to the reply on the same day. He shall not introduce in his rejoinder any matter not contained in his answer. He shall simply deny the truth of the reply of the plaintiff, or of those parts of it which he means to dispute, or aver the truth or competency of his own answer, and no further pleadings whatever shall be admitted in suits before the moonsiffs. *Fourth.* The answer, reply, and rejoinder, in suits tried by the moonsiffs, are not required to be written on stamp paper.<sup>1</sup> *Fifth.* In suits in which the plaintiff may delay to file his reply, or the defendant to file his rejoinder, within the fixed periods; the moonsiffs are not required to postpone the trial of the suit on that account, but may proceed in it in the same manner, as if the reply or the rejoinder had been actually filed." § 26. "The moonsiffs shall try all suits depending before them, in the order in which they have been filed or numbered; provided however, that the zillah or city judge be at all times authorized either upon a report from the moonsiff, or upon other grounds of information to direct the moonsiff to bring any particular suit or suits to a hearing and determination without attending to the regular order of the file." § 27. "*First.* In cases, in which the answer shall have been filed, and the parties or either of them shall fail to appear in person or by vakeel at the time when the suit is first called over for trial, the moonsiff shall suspend the trial, and shall affix, in some conspicuous place in his cutcherry, a notice that the suit will be again called over for trial after the expiration of a fixed period, not being less than ten days. If the plaintiff shall not appear before the moonsiff in person, or by a vakeel duly authorized, within the limited time; the moonsiff shall dismiss his claim: if the defendant shall not so appear by the prescribed time, the moonsiff shall proceed to try the cause *ex parte*. *Second.* Provided however, that if the suit be dismissed without an investigation of the merits, and either of the parties shall appeal from the decision of the moonsiff, it shall be the duty of the court trying the appeal to determine the case on its merits, or to remand it back to the moonsiff, by whom it was dismissed, or to any other competent authority for a further investigation. § 28. "The moonsiffs are to try the suits depending before them, by hearing the pleadings of the parties, by examining their documents, and by taking the depositions of their witnesses in the presence of the parties, or of their vakeels duly constituted. They may also examine the truth of the

<sup>1</sup> This provision, as well as the provisions contained in the third clause of Section 29, and the first clause of Section 38, of the regulation here cited, are extended by Section 2, R. 3, 1817, "to all original suits and appeals, not exceeding in amount or value the sum of sixty-four rupees, which may be instituted in the zillah or city courts; whether those suits be tried by the zillah or city judges themselves, or be referred for trial to the sudder ameens, or registers." By Section 3, of the same regulation, "the rates of stamp duty prescribed for the register's court, by Sections 15, 16, and 17, R. 1. 1814, are "declared applicable to appeals from the decisions of sudder ameens, which may be referred for trial to the zillah and city registers, in all cases in which the amount or value originally adjudged against the appellant shall exceed sixty-four rupees."

## COURTS OF NATIVE COMMISSIONERS.

claim by the oaths of the parties, if they mutually consent to that mode of examination." § 29. "First. If the plaintiff or defendant shall be desirous of summoning any witnesses to appear before the moonsiff, and such witnesses shall not attend at the requisition of the parties, the moonsiff is authorized to summon as witnesses, any persons subject to his jurisdiction, excepting women whose rank may be such as to render it improper to require their appearance in public. When the evidence of such women is necessary, it is to be taken in the mode prescribed by Section 6, Regulation 4, 1793; Section 2, Regulation 8, 1795; and Section 7, Regulation 3, 1803. Second. The summons shall specify the number of the suit on the file, the name of the party at whose request it may be issued, and the names and residence of the witnesses, and shall require them to appear at the cutcherry of the moonsiff on a specific day; and there to depose concerning the matter in dispute between the parties. Third. The application of parties for the attendance of witnesses before a moonsiff need not be written on stamp paper, nor shall any fee be demanded or received by the moonsiff for issuing the prescribed summons. Fourth. The moonsiff shall deliver the summons to the party applying for it, or to his authorized vakeel, and such party or vakeel may either serve the summons himself, or through any other person whom he may choose to employ for that purpose; provided however that the name of the person intended to be employed in this duty be in all cases notified to the moonsiff, and endorsed on the summons previously to its being delivered to the party or his vakeel for execution." § 30. "If any individual whose evidence is required shall be a person employed in the provision of the Company's investment under the commercial residents, or in the provision of salt and opium under the agents of Government, the summons shall be served in the same manner as is prescribed in Section 20, of this regulation, respecting the issue of notice to a defendant. The moonsiffs will be careful not to summon such persons unnecessarily, and on their attendance, shall cause them to be examined and dismissed with all practicable dispatch." § 31. "First. If any person upon whom a summons may have been duly served in the manner above prescribed, shall not attend on the day appointed, the moonsiff is authorized to attach any property belonging to such person which may be found within his own jurisdiction. If after a reasonable time subsequent to such attachment, the person summoned shall still omit or refuse to attend, and it shall satisfactorily appear by the oath of the party requiring his evidence, that the testimony of such person is material to the cause, the moonsiff shall report the circumstances of the case to the judge, who will exercise his discretion in issuing such further process in order to compel the appearance of the witness before the moonsiff as might be issued under the regulations if the suit were depending before the judge. Second. If notwithstanding this further process, the attendance of the witness cannot be obtained, the judge shall at his discretion impose on such witness a fine not exceeding in any case the value or amount of the property in dispute; such fine shall be realized under the general provisions in force for the execution of decrees. Third. In cases in which a witness duly summoned may attend before the moonsiff, but shall refuse to give his evidence, or to subscribe his deposition, the moonsiff shall impose such fine upon him as may appear proper. The moonsiff is however strictly prohibited from realizing such fine by his own authority; he shall report the circumstances of the case to the judge, who will either remit, or modify, or confirm the fine imposed by the moonsiff, and will proceed to realize it in the same manner as is prescribed in the preceding clause." § 32. "First. If any moonsiff shall require the evidence of a person not subject to his jurisdiction, and such person shall not attend at the requisition of the parties, the moonsiff shall make application to the zillah or city judge, who will issue the necessary process for

Section 29.  
Moonsiffs au-  
thorized to  
summon wit-  
nesses who  
may not attend  
on the requi-  
sition of the  
parties.

What the sum-  
mons shall  
contain.

Summons need  
not be written  
on stamp pa-  
per, and not  
liable to any  
fee.  
Mode in which  
the summons  
shall be  
served.  
Proviso.

Section 30.  
Mode of sum-  
moning wea-  
vers and cer-  
tain other per-  
sons employed  
on the part of  
Government,  
whose evi-  
dence may be  
required be-  
fore moonsiffs.

Section 31.  
The property  
of witnesses  
who may not  
attend after  
being duly  
summoned, to  
be attached.  
Moonsiffs how  
to proceed if  
after such at-  
tachment wit-  
nesses shall  
not attend  
within a rea-  
sonable term.  
Further pro-  
cess to be used  
by the judge.  
In what case  
witness to be  
fined by the  
judge.

Fine how to be  
realized.  
Recusing wit-  
nesses to be  
fined by the  
moonsiffs, and  
the circum-  
stances re-  
ported to the  
judge.

How the judge  
is to proceed  
on receiving  
such report.

Section 32.  
Witnesses re-  
siding in other

jurisdictions, how to be summoned.

Cases in which the evidence of witnesses required by moonsiffs may be taken on written interrogatories.

#### Section 33.

Witnesses not to be maltreated by moonsiffs, or detained from their homes longer than may be necessary.

Section 34. The evidence of witnesses to be taken on oath.

Or on a solemn declaration.

#### Section 35.

The oath or solemn declarations of witnesses may be dispensed with by consent of the parties.

#### Section 36.

Witnesses are not to be instructed or intimidated, and all leading and irrelevant questions are to be avoided.

#### Section 37.

What is to be contained in the deposition of a witness, and how it is to be attested.

#### Section 38.

Exhibits in suits before moonsiffs not liable to fees or stamp duties.

But not admissible unless written on prescribed stamp paper.

Moonsiffs to report instances in which exhibits may appear to be written on paper differing from prescribed stamp paper.

Exhibits to be dated, signed, and marked, and to be described accordingly.

procuring his attendance either through the proper officers of his own court, or through the judge or the moonsiff, within whose jurisdiction such person may reside. *Second.* If however the residence of the witness shall be at a considerable distance from the moonsiff's cutcherry, or if other circumstances should render it inconvenient or improper to compel the personal attendance of any witness, the moonsiff is hereby authorized and required to transmit to the judge any written interrogatories, which he may think necessary, or which may be suggested by the parties or their vakeels, in the suit. On the receipt of such written interrogatories, the judge will proceed to obtain the evidence of the witness in the mode prescribed by Section 6, Regulation 4, 1793; Section 2, Regulation 8, 1795; and Section 7, Regulation 3, 1803."

§ 33. "The moonsiffs are hereby strictly prohibited from confining or otherwise punishing witnesses, and they are enjoined to take the depositions of witnesses attending before them, with all due expedition, so that they may not be exposed to any vexatious delay or unnecessary detention from their respective homes and employments."

§ 34. "The moonsiffs shall administer to witnesses such oaths as may be considered most binding on their consciences, according to their respective religious persuasions. But if the witness shall be of a rank, which according to the prejudices of the country would render it improper to compel him to take an oath, the moonsiff may dispense with his being sworn; and in lieu thereof, cause him to subscribe a solemn declaration (or hulnamah) under the rules prescribed in Section 6, Regulation 4, 1793; and Section 7, Regulation 3, 1803; or such other rules as may hereafter be prescribed."

§ 35. "The moonsiffs are at all times authorized to cause the examination of a witness to be taken on a solemn declaration, or even without such solemn declaration, whenever the parties in the suit, or their respective vakeels, may voluntarily and mutually agree to such witness being so examined."

§ 36. "In the examination of witnesses, the moonsiffs are enjoined carefully to prevent the parties and their vakeels or agents from instructing or intimidating the witnesses, or from putting to them leading questions, or questions suggesting a particular answer; questions also with regard to the personal character of the parties, or on points evidently irrelevant to the matter in dispute, are to be avoided as much as possible."

§ 37. "The deposition of every witness shall commence by specifying the name, the father's name, (or, if the deponent be a married woman, the name of her husband,) the religion, cast, profession, age, and place of residence of the deponent, and shall be subscribed by the witness with his or her name or mark."

§ 38. "*First.* No fees shall be levied on exhibits filed before the moonsiffs, and exhibits shall be received in suits depending before them, without any derkhast or written application for that purpose. The moonsiffs are strictly prohibited from admitting or filing as an exhibit, or from receiving in evidence, any obligation, instrument, bond, deed, or document, whether it be the original, or a copy, of a description which is or may be required to be written on stamp paper, unless it shall have been duly executed on stamp paper of the description, value, and denomination prescribed by the regulations. *Second.* In cases in which a moonsiff shall entertain doubts whether a document presented to him as an exhibit has been duly executed on paper bearing the prescribed stamp, he shall transmit such document, with a statement of the case, to the judge for his opinion, and shall be guided by the instructions he may in consequence receive from the judge, either in rejecting, or admitting such exhibit. *Third.* When an exhibit is filed in a suit before the moonsiff, it shall be dated and signed or sealed by him, and shall be marked with some letter or number to identify it, and such letter or number shall be distinctly referred to in those parts of the depositions of the witnesses, or of the proceedings, or of the decree, as may

allude to such exhibit." § 39. "When the parties have been heard, and the exhibits received and considered, and the witnesses on both sides examined, the moonsiff shall give judgment according to justice and right." § 40. "The decree shall specify the names of the parties, and the names of the witnesses examined, and the titles of the exhibits read. It shall also contain an abstract statement of the material facts alleged in the pleadings of both parties, and an elucidation of the principal grounds and reasons on which the decision may be passed. It shall state specifically the sum of money, or the value or amount of the costs or damages payable by the parties respectively. If any claim shall appear to the moonsiff to be evidently litigious and vexatious, he shall adjudge suitable costs and damages against the plaintiff, and insert the same in the mode above directed in the decree." § 41. "First. When the decision shall have been thus passed, the moonsiff shall cause two copies of it to be prepared, and after attesting them with his seal and signature shall, within one week after the date of the decree, tender the said copies in open cutcherry, both to the plaintiff and defendant or to their vakeels respectively; he shall endorse on the back of the said copies the actual date on which they may be tendered to the parties in open cutcherry, and if either or both of the parties shall fail to attend, or shall refuse to receive the copies so tendered, he shall certify the same on the back of the copies. Second. Any moonsiff who may be guilty of wilfully mistating, or falsifying, or of causing to be mistated or falsified, the date and purport of the endorsement above directed to be written on the copies of the decrees, or of keeping back such copies of decrees from either of the parties, with the view of defeating or opposing a bar to their right of appeal shall, on proof thereof to the satisfaction of the provincial court, be liable to dismissal from office, and to such discretionary fine to Government as may be deemed proper by that court. Third. The copies of decrees above directed to be tendered to parties by the moonsiffs, need not be written on stamp paper." § 42. "If a party, vakeel, or witness in any depending suit, shall be guilty of disrespectful behaviour to the moonsiff in open court, the moonsiff is empowered to impose such fine on the party, vakeel, or witness so offending, as may appear proper. The moonsiff is however strictly prohibited from realizing such fine by his own authority. He shall report the circumstances of the case to the judge, who will either remit, modify, or confirm the fine imposed by the moonsiff; and in either of the latter cases, will proceed to levy it under the general provisions in force for the execution of decrees." § 43. "First. It shall be the duty of the moonsiffs to transmit to the judge on the fifteenth of each month, or as much sooner as may be practicable, a report of all the suits decided by them in the preceding month, drawn up according to the annexed form No. 5. These

Section 39.  
The decision is to be passed after consideration of the pleadings, exhibits, and evidence.  
Section 40.  
What shall be contained in the decree.  
In what cases costs and damages to be awarded.  
Section 41.  
Two copies of the decree to be prepared and tendered to the parties.

What to be certified, in certain cases, on the back of the copies.  
Penalty for falsifying the date and purport of the endorsement and for keeping back copies of the decree from either of the parties.  
Copies of decrees need not be on stamp paper.  
Section 42.  
Moonsiff may fine parties, vakeels, or witnesses, for disrespect in open court, and shall report such fines to the judge.  
The judge may remit, or modify, or confirm the fines.  
Section 43.  
Monthly report of suits decided and proceedings on

*Form of Monthly Report of causes decided by A. B. moonsiff, or sudder ameen of in the month of corresponding with the month of*

Number of the suit on the Register Book, and date of its institution (or reference).	Names of the parties.	Substance of the suit.	Date and substance of the decision.	Value of stamp paper on which the plaint was written.
No. 6. 4th February, 1815.	Ramchurn, vs. Radanath.	Debt of 20 Rupees.	Decreed on the 3d April, for 20 Rupees, and 2 Rupees 8 As. costs.	2 Rupees.

such suits to be transmitted to the judge. Half-yearly report of depending suits to be transmitted to the judge according to a prescribed form. Monthly and half-yearly reports how to be forwarded to the judge.

Section 44. Moonsiffs prohibited from exercising their own decrees.

Section 45. Mode of obtaining the execution of a decree passed by a moonsiff.

A petition to be presented to the judge. What such petition is to contain.

Decree and report of causes decided to be examined.

Mode of proceeding where an appeal may have been admitted.

reports shall be accompanied by all the original papers and documents in the case, that they may be deposited among the records of the court.

*Second.* The moonsiffs shall likewise be required to transmit on the 15th of January and 15th of July of each year, or as much sooner as may be practicable, a report of the causes depending before them on the 1st of January and 1st of July, drawn out according to the annexed form No. 6.<sup>1</sup>

*Third.* The required monthly and half-yearly reports shall be enclosed in a cover addressed to the judge, and sealed with the seal of the moonsiff. The packet shall be forwarded to the judge either by the public dawk, (the officers of which are hereby required to receive and convey such packets free of postage,) or by a servant of the moonsiff, or the moonsiff may deliver it to the nearest police darogah, who shall give a receipt for it, and convey it to the judge. The moonsiffs are directed to seal and fasten the public packets and reports which they may have occasion to transmit to the court, in such a manner as may enable the court to detect any instance in which the packets may be opened, or the seals broken, during their transmission to the court."

§ 44. "The moonsiffs are strictly prohibited from enforcing their own decisions, and from issuing any process, or using any coercive means for that purpose, except in cases in which the judge, under the power vested in him by Sections 51 and 52, may deem it expedient to employ them in the execution of that duty."

§ 45. "*First.* Whenever a party who may have obtained a decree in the court of a moonsiff shall be desirous of having it enforced, he shall present a petition to the zillah or city judge, written on the stamp paper prescribed by Section 18, Regulation 1, 1814. If the decree shall have been passed previously to the 1st of February, 1815, the petition shall be presented within the period of one year from that date; if the decree shall be passed on or after the 1st of February, 1815, the petition shall be presented within the period of one year from the date of the decree.

*Second.* Such petition shall be presented either in person or through an authorized pleader of the court, and shall contain a statement of the number of the suit, of the name and designation of the moonsiff by whom it was decided, of the names of the parties in the cause, of the date of the decision, and of the total sum which may have been adjudged to the petitioner either on account of the original claim or of costs of suit; the petition shall further state whether an appeal has or has not been admitted from the moonsiff's decision.

*Third.* When such petition shall be received, the judge shall cause the purport of the petition to be compared with the decree in the original record of the suit, and with the statement contained in the monthly report of causes decided by the moonsiff. *Fourth.* If the suit shall have been regularly appealed, the execution of the moonsiff's decree shall be suspended or

<sup>1</sup> *Half-yearly Report of causes depending before A. B. moonsiff, or sudder ameen of*  
*on the 1st of July, 1815.*

Number of the cause in the Register Book, and date of its institution (or reference).	Names of the parties.	Substance of the suit.	Remarks explanatory of the cause remaining undecided.
No. 96. 4th of May, 1815.	Ramchurn, vs. Gungaram.	30 Rupees, Balance of Accounts.	Suspended for the evidence of witnesses on the part of the defendant, who have been summoned.

otherwise, according to the rules in force. *Fifth.* If the petition for the execution of a moonsiff's decree shall not be presented until after the periods prescribed in Clause First of this section, and no satisfactory cause shall be shown for the delay, such decree shall not be executed, but the party shall be allowed to institute a new suit in the zillah or city court; in the trial of such suits, the defendant shall not be allowed to impugn the merits of the original judgment, passed by the moonsiff, unless the suit shall have been tried *ex parte* in the first instance; but he may show that the sum originally decreed, or any part of it, has been subsequently paid, or that the matter in dispute has been adjusted by the parties since the date of the original judgment. *Sixth.* If the petition for the execution of a moonsiff's decree, shall be presented within the limited periods prescribed by Clause First of this section, and no appeal shall have been preferred from the decision, such decree shall be enforced in conformity with the regulations; provided however, that if the judge shall have reason to believe that the decree was obtained in an irregular manner, or that on any other sufficient grounds it ought not to be enforced, he may permit the party against whom the decree may have been passed, to prefer an appeal from such decrees, although the prescribed period for admitting such appeal may have elapsed. *Seventh.* With a view to prevent the protracted imprisonment of persons confined in execution of decrees for sums of inconsiderable amount, it is hereby provided in addition to the rule contained in Section 11, Regulation 2, 1806, that no person from and after the 1st February, 1815, shall be liable to personal confinement, in satisfaction of a decree for any sum, not exceeding sixty-four sicca rupees, beyond a period of six months; but that at the expiration of that period, any person so confined, shall be entitled to be released; but any property which may belong to such person shall at all times, either during his imprisonment, or subsequently to his release, be liable to attachment and sale for the purpose of realizing the amount of the judgment, or such part thereof as may remain due." § 46. "*First.* Any person dissatisfied with the decision of a moonsiff, shall be at liberty to appeal from it to the judge, provided the petition of appeal be presented within thirty days after the date on which copies of the decrees may have been furnished or tendered to the parties or to their vakeels, in conformity with Section 41, of this regulation; a discretionary power however is vested in the judge of admitting appeals from decisions of the moonsiffs, although the petitions may not be presented within the prescribed period if the appellant shall show satisfactory cause for not having before presented the petition. *Second.* All petitions of appeal from decisions of the moonsiffs are to be presented to the judge of the zillah or city, in which the moonsiffs may officiate, and the moonsiffs are prohibited from receiving any petitions of appeal from their own decisions. *Third.* All petitions of appeal from decisions of moonsiffs are to be presented by the appellant in person, or by one of the authorized vakeels of the court; and if the appeal shall be admitted, and the appellant and respondent shall not plead their cause in person, their respective vakeels are to be allowed the same fees as in other suits tried before the judge. *Fourth.* Decisions of the moonsiffs are not to be set aside for want of form or for irregularity in their proceedings, but on the merits only. *Fifth.* When an appeal may be received from the decision of a moonsiff, the judge is empowered to suspend the execution of the decree, provided the party appealing against it, shall give good and sufficient security within a reasonable period to be fixed by the judge to perform the decree of the court." § 47. "*First.* The zillah and city judges may for any reason that may appear to them sufficient, bring up for trial before them, or their registers, or the sudder ameens, any causes that may be depending before the moonsiffs, or may transfer such causes from one moon-

If the periods limited for the execution of decrees shall have elapsed, the party to be referred to a new suit.

What may be pleaded by the defendant in such suit

If the limited periods shall not have elapsed the decree is to be executed. *Proviso.*

No person to be imprisoned in execution of a decree not exceeding sixty-four sicca rupees for a longer period than six months. But any property belonging to such person liable to be sold in execution of the judgment. *Section 46.* Mode of admitting appeals from the decisions of moonsiffs.

Petitions of appeal from decisions of moonsiffs to be presented to the judge. How such petitions are to be presented.

Decisions of moonsiffs not to be set aside for want of form. In what cases the judge may suspend the execution of decrees passed by moonsiffs. *Section 47.* Suits depending before moonsiffs may be tried by

the judge on referred for trial to other tribunals.

Section 48. When a vacancy may occur in the office of moonsiff, the judge to nominate a successor.

Section 49. Compensation to moonsiffs on the decision of suits subsequently to 1st of February, 1815.

The full value of the stamp paper on which the plaint may have been written to be paid to moonsiffs on suits decided by them on the merits, or adjusted by razeenamah. Statement to be prepared from the monthly reports of causes decided.

Suits dismissed on default, or nonsuited, not to be included in such statement.

The sums to which the moonsiffs may be entitled, to be paid to them through the treasurer of the court.

Section 50. The judges may employ the moonsiffs in the investigation of questions respecting local rights and usages.

siff to another." § 48. "Upon the death, removal, or resignation of any moonsiff, the judge shall, if necessary, immediately nominate another person in his room for the approbation of the provincial court, and shall cause all papers in the causes depending before the late moonsiff to be delivered over to his successor, or otherwise to be disposed of as circumstances may require."

§ 49. "*First.* The compensation, which the moonsiffs shall be hereafter entitled to receive for their trouble in the trial of suits which may be decided by them subsequently to the 1st February, 1815, and for the necessary establishment of officers, shall be adjusted in conformity with the following clauses. *Second.* On every suit which may be now depending or may be hereafter instituted in the cutcherry of the moonsiffs, and which may be adjusted by razeenamah or decided by the moonsiffs on an investigation of the merits, subsequently to the 1st February, 1815, they shall be entitled to receive the full amount of the institution fee, or the full value of the stamp paper, substituted for such institution fee, on which the plaint or petition in such suit may have been written. *Third.* Together with the monthly report of causes decided, which the moonsiffs are required to transmit under Section 43, of this Regulation; the moonsiffs shall forward a separate statement under their respective seals and signatures, exhibiting the amount of the institution fee, or the value of the stamp paper substituted for such institution fee, in all suits which may have been decided by the moonsiffs during the past month, on an investigation of the merits of the case, or which may have been adjusted by razeenamahs of the parties; from this statement shall be carefully excluded the amount of the institution fee, or the value of the stamp paper substituted for such fee, in those plaints, which may have been dismissed from the non attendance of the plaintiff, or from any other ground of nonsuit or default. The moonsiffs shall not be entitled to any remuneration on suits, which may have been disposed of by them without a determination on the merits of the case, or an adjustment by razeenamahs of the parties. *Fourth.* The statement so transmitted shall be carefully revised, and shall be compared with the original records of the suits by the serishtadar or treasurer or other authorized officer of the court, and shall be countersigned by such officer in testimony of his having ascertained the accuracy of the statement; an order shall then be endorsed on the statement under the seal of the court, and the signature of the judge, and such order shall be a sufficient authority to the treasurer of the court for the payment of the amount to the moonsiffs." § 50. "*First.* In questions which may arise in suits depending before the judge of any zillah or city court relating to the adjustment of accounts in revenue or mercantile transactions, or regarding the boundaries of lands or houses, or regarding the right of way in roads or path-

<sup>1</sup> By Section 11, Regulation 13, 1810, it was provided, "with a view to encourage the adjustment of depending suits and appeals by razeenamahs of the parties," that "in all instances of the adjustment of an original suit or appeal, by a razeenamah filed before the pleadings are completed and read, whether the cause be depending before a native commissioner, sudder or mofussil, or before the judge, or register, of a zillah or city court, or before a provincial court, or the court of sudder dewanny adawlut; the entire institution fee paid upon the cause so adjusted, shall be returned to the party who may have paid the same; or to his legal representative;" or "in the event of the razeenamah being filed after the pleadings are completed and read, a moiety of the institution fee shall be returned to the party who may have paid the same, or his legal representative." But it is declared in Section 4, Regulation 3, 1817, "that the plaintiffs or appellants, in suits which may be adjusted by razeenamah before the moonsiffs and sudder ameens, are not entitled to receive back any part of the value or amount of the fee in question; the whole of which is to be paid to the sudder ameens, or moonsiffs, in conformity with the second clause of Section 49, Regulation 23, 1814."

ways, or regarding any rights in forests, commons, rivers, lakes, ponds, wells, reservoirs, or water courses, or regarding the quantity or description of land, and the rent to which it is liable, and generally in all questions of local rights and usages which cannot be conveniently decided without an enquiry on the spot, the zillah or city judge may empower any moonsiff within his jurisdiction to make a local investigation into the merits of the question in dispute. *Second.* The zillah or city judges shall furnish to the moonsiffs such part of the proceedings, and such detailed instructions in each case, as may be necessary for his information and guidance, and shall enjoin the moonsiff, either merely to take the requisite evidence in the presence of the parties or their vakeels, and to transmit the same to the court, or likewise to transmit, with the evidence so taken, a report of his own sentiments on the point at issue founded on the result of the investigation held by him. *Third.* The proceedings of the moonsiff are to be received as evidence in the case with regard to the specific matter, which he may have been directed to investigate, but if the judge shall have reason to be dissatisfied with the proceedings of the moonsiff, he is at liberty to make such further enquiry as may be requisite, and to pass such ultimate judgment as may appear to him to be right and proper." § 51. "*First.* The zillah and city judges are further authorized to employ the moonsiffs in delivering over formal possession of lands, houses, or other real property in conformity with decrees regular or summary. *Second.* Previously however to issuing any instructions to a moonsiff for the performance of any of the duties described in this or the preceding section, the judge shall require either the plaintiff or the defendant, according to the circumstances of the case, to pay into court such a sum of money as may be an adequate remuneration to the moonsiff for his trouble, provided such sum do not exceed the probable expense which would be incurred if an ameen or a native officer of the court were employed in the execution of the same duty. *Third.* The moonsiff shall be entitled to receive such sum as may have been paid into court under the preceding clause, except under circumstances, in which he may appear to have performed the duty entrusted to him in a negligent, unjust, or improper manner; in such cases the said sum of money shall be returned to the party who deposited it in court." § 52. "The moonsiffs may be employed at the discretion of the zillah and city judges in the attachment and sale of personal property for the purpose of realizing the amount of fines, or of decrees regular or summary, and shall be entitled to receive a commission of one anna in each rupee on the proceeds of such sales." § 53. "The zillah and city judges are further empowered to employ the moonsiffs in ascertaining and reporting upon the sufficiency of securities, and the indigence of persons suing in formâ pauperis." § 54. "The provisions of the preceding sections are not intended to preclude the zillah and city courts from deputing an ameen for local enquiries, or from employing the authorized officers of the court in the execution of the various duties above detailed, whenever they may deem it expedient to do so in conformity with the existing regulations; and the zillah and city judges will be careful, that the time of the moonsiffs be not so much occupied in the miscellaneous duties above described, as to interfere materially with the early trial and decision of the regular suits depending before them." § 55. "The moonsiffs shall continue to discharge the same functions and to exercise the same powers as are at present vested in them by the Regulations in force, regarding distress and sale for the recovery of arrears of rent."

Instructions and proceedings to be furnished to the moonsiff in such cases.

The proceedings of the moonsiff to be received as evidence in such cases, unless the judge may be dissatisfied with them. Section 51. Moonsiffs may be employed in giving possession of real property under decrees. Moonsiffs how to be remunerated for their trouble in such cases.

Such remuneration to be forfeited, if the moonsiff shall have been guilty of misconduct in the execution of the duty.

Section 52. Moonsiffs may be employed to sell personal property and receive a commission.

Section 53. Also to report on sufficiency of securities, and indigence of paupers.

Section 54. Preceding rules not to preclude employment of ameens or officers of the court.

Caution that moonsiffs be not too much occupied in miscellaneous duties.

Section 55. Moonsiffs to act as heretofore in the sale of distrained property.



*Local rule for moonsiffs in the town of Juggunauth-poree in zillah Cuttack.*

Section 56.  
Local rule for  
moonsiffs in  
the town of  
Juggunauth-  
poree.

§ 56. "The rules contained in Section 6, of this Regulation, regarding the local jurisdiction of moonsiffs, shall not be considered applicable to the dewul purchas, who under Section 23, Regulation 4, 1806, may be appointed to the office of moonsiff in the town of Juggunauth-poree, and its dependencies. Such moonsiffs shall however receive a new sunnud drawn up according to the form prescribed in No. 1, and shall be invested with the additional powers conferred on moonsiffs generally by this regulation."

*Local rules for moonsiffs in zillah Chittagong.*

Section 57.  
The judge of  
zillah Chitta-  
gong may refer  
suits for land-  
ed property  
not exceeding  
sixty-four ru-  
pees in amount  
to the moon-  
siffs in that  
zillah.

Section 58.  
Form of sunnud  
to be granted  
to moonsiffs in  
zillah Chitta-  
gong, and of  
the oath to be  
taken by them.

Section 59.  
Special rules  
for commis-  
sioners of land  
suits in zillah  
Chittagong.  
By what laws  
their decisions  
are to be regu-  
lated.

Exposition of  
the law how  
to be obtain-  
ed.

Notification to  
be issued in  
suits relative  
to the inheri-  
tance of, or  
succession to,  
landed prop-  
erty.

And all claim-  
ants to be in-  
cluded in the  
decision.

§ 57. "The preceding rules of this regulation are hereby declared applicable to the native commissioners employed in the zillah of Chittagong, but in addition to the suits for sums of money, or personal property not exceeding sixty-four rupees, which they are authorized to receive and try under this regulation, the judge of zillah Chittagong is hereby empowered to refer to them for trial and decision suits for landed property, provided that the amount of the suit, calculated in conformity with the provisions of Section 14, Regulation 1, 1814, do not exceed the sum of sixty-four sicca rupees."

§ 58. "The moonsiffs in zillah Chittagong who may be vested with the powers of hearing and determining suits for landed property, shall receive a sunnud from the judge in the form prescribed in No. 1, and shall take the oath prescribed in the form No. 2, with such alterations in those forms respectively as may be requisite under the preceding section."

§ 59. "First. The special rules contained in the two following clauses, are further prescribed for their guidance. *Second:* In all cases of inheritance of, or succession to, landed property, the Mahomedan laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos, are to regulate the decision; and the commissioners in all such cases are to obtain an exposition of the law from the law officers of the zillah court, to whom they are to transmit a written abstract of the case for this purpose; such exposition however is not to preclude a further reference to the law officers of the zillah courts, upon such points of law, as may arise upon the cause in the event of its being tried in appeal. *Third.* In all suits relative to the inheritance of, or succession to, landed property, the commissioners are to affix in some conspicuous part of their cutcherries a written notification of the claim preferred, with a requisition to all persons who may have any claim to the property sued for, to prefer the same within a limited period, and their decisions are to include all claimants to the property in question, who according to the law of the parties whether Mussulmans or Hindoos, have a just and legal title to share therein."

Section 60.  
Jurisdiction  
and duties of  
sudderameens.

Section 61.  
Provincial  
courts may  
augment or di-  
minish the  
number of sud-  
derameens ac-  
cording to local  
circumstances.

Section 62.  
Law officers of  
the zillah and  
city courts to

*Rules for Office of Sudder Ameen.*

§ 60. "The following rules are enacted for defining the jurisdiction and explaining the duties of the persons who now hold, or may hereafter be appointed to the office of sudder ameen."

§ 61. "The number of sudder ameens to be hereafter employed in each zillah or city shall be unlimited. The provincial courts may at all times exercise their discretion in diminishing or augmenting the number of those officers on a consideration of the state of civil business and other local circumstances."

§ 62. "The Mahomedan and Hindoo law officers of the zillah and city courts, shall by virtue of their

offices, be deemed sudder ameen of the zillah or city, in which they may be respectively employed." § 63. "All other sudder ameen shall be nominated by the judges of the zillah or city courts, and approved by the provincial court, and shall not be authorized to enter upon the duties of the office without the previous sanction of that court." § 64. "In the future nomination of individuals for the office of sudder ameen, the zillah and city judges are not restricted to persons of any particular class or religious persuasion, but are required carefully to select such individuals, as may be best qualified for the trust, and to communicate to the provincial court full information regarding the native country, age, education, capacity, character, and past employments, of the individuals whom they may recommend." § 65. "First. The commissions or sunnuds of appointment, which may have been granted to persons holding the office of sudder ameen, shall be recalled and cancelled; and in lieu thereof new sunnuds shall be granted to them under the seal and signature of the judge, drawn up according to the form prescribed in No. 7. Second. Similar sunnuds shall also be granted to all persons, who may be hereafter appointed to the office of sudder ameen. It will not however be necessary to grant such sunnuds to the law officers of the zillah and city courts, who by Section 62, of this Regulation, are, by virtue of their offices, vested with the powers of sudder ameen." § 66. "Every person, who may in future be appointed to the office of sudder ameen, shall, previously to entering upon the execution of the duties of his situation, take and subscribe an oath according to the form prescribed in No. 8. before the judge of the zillah or city in which he may be appointed to officiate; but the judge is empowered in all cases, in which he may deem it expedient, to exempt such sudder ameen from taking the oath, and in lieu thereof to cause him to subscribe a solemn declaration to the same effect." § 67. "The provisions of Sections 9 and 10, of this regulation, are hereby declared to be applicable to the office of sudder ameen, as well as to that of moonsiffs appointed under

be ex-officio sudderameens. Section 68. Nomination and appointment of other sudderameens. Section 64. Judges to report to the provincial courts the qualifications of persons whom they may recommend for the office. Section 65. Former sunnuds granted to sudder ameen to be recalled and new sunnuds to be furnished to them. But not to the law officers of the zillah and city courts. Section 66. Form of oath to be taken by sudder ameen; or a solemn declaration in lieu of the oath.

Section 67. Sections 9 and 10, of this Regulation, applicable to sudder ameen.

*1 Form of Sunnud to be granted to persons appointed to the office of Sudder Ameen.*

"I, A. B., judge of the zillah or city in virtue of the powers vested in me by Regulation 23, 1814, do hereby appoint you C. D. to the office of sudder ameen of the zillah or city of You are to hold your cutcherry at and are to affix this sunnud, or a copy of it, duly authenticated, in some conspicuous place in the cutcherry. You will receive the remuneration to which you may be entitled for the trial and decision of suits, from the zillah or city court; and you are not entitled to receive any institution or other fee, any deposit or sum of money or valuable consideration, from any parties or other persons, on account of the institution or trial, the proceedings, process, or decision, of any suits before you. You are not empowered to take or demand any security, to levy any fine, or to execute any decree, without the previous sanction and orders of the zillah or city court in each instance. You are to hear and determine all suits cognizable by you, and to execute all other duties entrusted to you in your capacity of sudder ameen, in strict conformity with the rules prescribed in the regulations now in force, or which may hereafter be enacted."

*2 Form of Oath to be administered to persons appointed to the office of Sudder Ameen.*

"I, A. B., appointed to the office of sudder ameen of the zillah or city do solemnly swear, that in the trial and determination of all suits which may come under my cognizance, and in the execution of all the other duties of my office, I will act according to the best of my abilities and judgment, without partiality, favor, or affection; that I will not directly or indirectly receive, or knowingly allow any other person to receive, any money, effects, or property, on account of any suit that may come before me for decision, or on account of any public duty which I may have to execute; I will strictly adhere to all the rules prescribed for my guidance; and I will in all respects truly and faithfully execute the trust reposed in me."

Their cutcherries to be held in such places as the judges may direct. Section 68. What suits may be referred to a sudder ameen.

Section 69. Cases involving questions of law to be referred respectively to the Hindoo and Mahomedan law officers. Section 70. Stamp duty to be levied on the institution of suits referred to sudder ameens.

Section 71. Sudder ameens are themselves to investigate suits referred to them. Section 72. How such suits shall be pleaded.

Section 73. Recital of the provisions of this regulation which are applicable to suits tried by sudder ameens.

Section 74. Rules to be followed in cases not expressly provided for. Proviso.

Further proviso.

this regulation : the sudder ameens are to hold their cutcherries at the station where the zillah or city court is held, in such convenient places as the judge may direct." § 68. "The judges of zillahs and cities are authorized to refer to the sudder ameens for trial and decision any original suits for money or other personal property, not exceeding in amount or value 150 sicca rupees, or for the property or possession of land or other real property, the amount of which calculated in conformity with the provisions of Section 14, Regulation 1, 1814, may not exceed 150 sicca rupees. No suit however shall be hereafter referred for trial and decision to a sudder ameen, in which he himself, or his relatives, or dependants, or the vakeels or officers of his court, or a British European subject, or an European foreigner, or an American, may be a party, or in which the plaintiff may have been admitted to sue in formâ pauperis." § 69. "In referring suits for trial to the sudder ameens, the judge shall generally refer such cases as are likely to involve questions of Hindoo law to the Hindoo law officer, and of Mahomedan law to the Mahomedan law officer." § 70. "No institution fee shall be levied on suits referred to any sudder ameen, but the following stamp duties shall be levied in lieu thereof, in conformity with the tenor of the rules contained in Regulation 1, 1814 :—

If the sum of money, or value or amount claimed, shall not exceed sixteen rupees, the plaint or petition shall be written on stamp paper of one rupee.

If above sixteen, and not exceeding thirty-two rupees, two rupees.

If above thirty-two rupees, and not exceeding sixty-four rupees, four rupees.

If above sixty-four, and not exceeding one hundred and fifty rupees, eight rupees."

§ 71. "The sudder ameens are themselves to investigate the suits referred to them, in a public cutcherry or court room, and are not to allow their officers, servants, or dependants, or any other person to interfere therein."

§ 72. "All causes referred to the sudder ameens, shall be pleaded either by the parties in person, or by an authorized vakeel of the zillah or city court. The judges of the several zillahs and cities will assign to the court of each sudder ameen such a number of the authorized vakeels as may appear necessary. The whole of the regulations in force, regarding the authorized vakeels of the zillah and city courts, shall be applicable to the authorized vakeels employed in the courts of the sudder ameens."

§ 73. "The provisions contained in Sections 18 and 23, clause fourth, Section 25, in Sections 26, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 46, 47, 48, and 49, of this regulation, are hereby declared to be equally applicable to original suits referred to sudder ameens, as to those tried by moonsiffs. The special rules prescribed in Sections 57, 58, and 59, shall be likewise strictly observed by the sudder ameens in all suits, which may be referred to them relative to the inheritance of, or succession to, landed property."

§ 74. "In points not expressly provided for by the foregoing rules, the sudder ameens shall observe as nearly as may be practicable the rules prescribed in the regulations for the guidance of the zillah and city courts in the trial and decision of original civil suits. Provided however, that every notice, summons, attachment, or other process, relative to any cause depending before a sudder ameen, shall be issued under the seal of the zillah and city court, and under the official signature of the judge or register, and shall be executed through the regular officers of the zillah or city courts; provided further, that nothing in this regulation shall be construed to empower the sudder ameens to realize by their own authority any fines, which they may impose under the general regulations. In such instances they shall report the circumstances of each case to the zillah or city judge, who will either remit, or modify, or confirm, the fine imposed by the

sudder ameen, and will proceed to realize the same under the same rules as are prescribed for the execution of decrees." § 75. "First. In addition to the original suits, which the zillah and city judges are authorized to refer to sudder ameens under Section 68, they are empowered to refer to the sudder ameens, any depending appeals from the decisions of moonsiffs, which the judges themselves may be unable to try and determine with sufficient dispatch. *Second.* The sudder ameens, to whom such appeals may be referred, shall keep a separate register book of them, according to the form prescribed in No. 4; and in their monthly and half-yearly reports, they shall carefully distinguish suits referred to them in appeal, from suits referred to them for trial and determination in the first instance. The decisions of sudder ameens on appeals referred to them under this section shall be final, unless the zillah or city judges shall see reason to admit a special appeal under the provisions of Section 2, Regulation 26, 1814. *Third.* The sudder ameens shall try and determine all appeals, which may be referred to them, in conformity with the rules prescribed for the trial and determination of appeals by the zillah and city courts; and when such appeals may be decided by them on an investigation of the merits of the case, or may be adjusted by razeenamahs of the parties, they shall be entitled to receive the same fees, as in original suits decided by them under the provisions of Section 49, of this regulation." § 76. "First. In the trial of regular suits by the zillah or city judges, or in miscellaneous cases, whenever the adjustment of accounts regarding the execution of decrees, and mercantile or revenue transactions, or the investigation of disputes between landlord and tenant, or of other special matters of account, fact, or usage, may be requisite; and such adjustment or investigation, if conducted by the judge himself, would occupy a larger portion of his time than could be conveniently devoted to it; the judge is hereby authorized to direct any of the sudder ameens under his jurisdiction to make such adjustment or investigation. *Second.* The judge shall in these cases furnish to the sudder ameen such part of the proceedings and such detailed instructions, as may appear necessary for his information and guidance, and shall direct the parties or their vakeels, or authorized agents, to attend upon the sudder ameen, during the adjustment or investigation. *Third.* The instructions must distinctly specify, whether the sudder ameen is merely to transmit the proceedings, which he may hold on the enquiry, or also to report his own opinion on the point referred for his investigation. *Fourth.* The proceedings of the sudder ameen are to be received in evidence in the case, unless the judge may have reason to be dissatisfied with them, in which case he will make such further enquiry as may be requisite, and will pass such ultimate judgment or order, as may appear to him to be right and proper. *Fifth.* On the completion of the adjustment or enquiry, the judge shall order such a sum to be paid to the sudder ameen by one or both of the parties in the case, as may appear to be an adequate remuneration for his trouble; provided however that such sum shall in no case exceed one fourth of the value of the institution fee, or the amount of the stamp duty substituted for such institution fee, under Regulation 1, 1814. *Sixth.* Provided further, that in those zillahs or cities, in which a monthly salary is allowed by Government to a sudder ameen, the adjustments or investigations described in this section shall be referred to such head commissioner, in all cases, in which it would be improper to burthen the parties with any additional expense. In consideration of the monthly salary received by such sudder ameen from Government, he shall not be entitled to receive any additional compensation in those instances, either from the parties or from Government." § 77. "The power vested in the zillah and city judges by the preceding section, and by Sections 50, 51, and 52, of this regulation, of referring special matters for adjustment or investigation to sudder ameens and moonsiffs, may also be exercised by the

Section 75.  
What appealed suits may be referred to sudder ameens.

A separate register book to be kept of such appeals

Decisions of sudder ameens on such appeals to be final.  
Rules for the trial of such appeals, and remuneration, to which the sudder ameens are entitled.

Section 76.  
Matters of account and of fact and of usage may be referred to the sudder ameens for adjustment, investigation, and report.

Instructions to be furnished to the sudder ameens on such references.

What the instructions are to specify.

The proceedings of the sudder ameens on such references to be received as evidence.

Remuneration to be made to the sudder ameens on the completion of the duty.  
Proviso.

Further proviso.

Section 77.  
Power vested in zillah and city judges by Sections 50, 51, and 52, ex-

tended to registers with certain restrictions.

zillah and city registers in cases before them. With a view however to prevent the time of the sudder ameens and moonsiffs from being too much occupied by miscellaneous duties, the register shall make those references through the channel of the zillah and city judge, who will exercise his discretion, either in sanctioning the reference, or in enjoining the register to make the adjustment or investigation according to the ordinary and established forms."<sup>1</sup>

General observations on the foregoing provisions, for administering civil justice in the zillah and city jurisdiction.

In concluding the foregoing recital of the provisions made by the existing regulations for the administration of civil justice in the zillah and city jurisdictions, it is impossible to withhold the acknowledgment due to the benevolence, equity, and policy, which have dictated them; with such evident attention to the interests of humanity; the rights, laws, and prejudices of the people inhabiting this portion of the British Empire; and the surest, as well as the most honorable, means of maintaining that empire in India, by establishing it upon the solid foundations of justice, protection, and conciliation. In the simplicity of the form of action allowed in all cases, varying only as regular or summary, except in the mode of commencing a suit against Government; as well as in the general tenor of the rules prescribed for the pleading, trial, and decision, of every suit cognizable by the civil courts, and determinable either by specific law, or on principles of reason and equity; the intelligent regard shown to local circumstances, affecting the judicial officers, as well as the suitors, and their pleaders, is equally conspicuous. If, notwithstanding the number of civil courts which have been established; the means afforded for the speedy investigation and decision of inconsiderable causes, by the establishments of native commissioners; as well as in suits to a larger amount, by the references now authorized to the registers of the zillah, city, and provincial courts; it should still be found that the laws are not administered with that promptness, certainty, and facility, which are required to ensure their full beneficial effect; it cannot be doubted that experience will suggest further remedies to supply this radical defect; and that such measures as may be practicable, expedient, and sufficient for this purpose, will be adopted. If any thing be wanting to secure the integrity of the native commissioners, who (except the law officers and some of the other sudder ameens,) now receive no fixed salary; and to whom the fees allowed on causes decided by, or adjusted before, them, afford in many instances but a scanty and inadequate compensation, after providing for their necessary establishments, and charges of office; it may also be confidently presumed that so essential a requisite to the purity, impartiality, and consequent utility, of every judicial establishment, which has been wisely and liberally granted to the present European courts of judicature, will not be denied to those under native superintendence. These observations, however, are not so much intended to apply to any known abuses of a general, or important nature, in the subsisting inferior courts of civil justice; or to any defects now unprovided for in the superior courts; as to obviate the force of the only objections which have been, or can be, offered

<sup>1</sup> The provisions contained in Sections 68 and 75 of the regulation above cited correspond with the first, second, and fourth clauses of Section 7, Regulation 24, 1814, relative to the zillah and city civil courts, which have not therefore been inserted under the head of those courts. In the third clause of the same section it is provided, that "from all decisions passed by a sudder ameen on original suits, an appeal shall lie to the zillah or city judge, under the general rules in force regarding the admission of appeals; and the decision of the judge on such appeal shall be final, unless the provincial court shall see sufficient cause for admitting a special appeal, under the rules and restrictions contained in Section 2, of Regulation 26, 1814."

to the adequacy and efficiency of the judicatures actually established, in accomplishing the just and humane design of their institution ; and of the rules which have been framed for their guidance.

### *Provincial Courts.*

To provide against the possibility of unjust or erroneous decisions in courts of primary jurisdiction ; as well as to secure a strict regularity of proceeding in all such courts, by rendering their judgments and the grounds of them, the evidence taken, and every act done or ordered upon the original trial, subject to the inspection and revision of a superior authority ; it has been deemed expedient, in all countries where a system of legal administration has been introduced, to constitute courts of appeal, or review, with powers more or less extensive, according to the objects intended by them. The public utility of such superior courts, in rectifying error, maintaining regularity, and enforcing duty, is obvious ; and provided the course of justice be not too much delayed, or made too expensive, by appeals, the admission of them, within a limited period, must essentially conduce to the perfection of every judicial establishment. To render them efficient however ; as well as to prevent their being perverted from their just object, to purposes of procrastination, litigiousness, and oppression ; it is necessary that they should be easy of access to all persons who may have occasion to resort to them ; and that the appeals preferred to them should be investigated and decided with dispatch. But previously to the year 1793, the only courts of appeal, under the presidency of Fort William, were at Calcutta. In suits regarding rent or revenue, which were excluded from the jurisdiction of the dewanny adawluts, and cognizable in the first instance by the collectors, the appeal, (as already noticed,) lay to the Board of Revenue ; and ultimately to the Governor General in Council. In causes decided by the courts of mofussil dewanny adawlut, parties who considered themselves aggrieved by the decisions of those courts, had no tribunal to which they could apply for redress except the sudder dewanny adawlut. This court being composed of the Governor General and members of the supreme council, it was found requisite, with a view to prevent a greater number of appeals than the general administration of public affairs would allow of being heard, to restrict the admission of appeals to cases in which the decisions of the mofussil courts might be for an amount or value exceeding one thousand sicca rupees ; or for lands the annual produce of which might be more than that sum, if assessed for the public revenue ; or more than one hundred rupees, if exempt from the payment of revenue.<sup>1</sup> Under this limitation the greater part of the suits determined in the mofussil courts, (including the whole of those instituted by the lower classes of the people) were not appealable ; and in suits that were appealable, persons re-

General reasons for the establishment of courts of appeal.

And utility of such courts, provided they are not attended with excessive delay or expense.

Facility of access and dispatch necessary to render them efficient.

Courts of appeal subsisting before 1793, in what respects defective.

<sup>1</sup> Supposing the land-tax to be nine-tenths of the neat rent produce ; at which rate it was formerly computed, when the assessment was fixed upon the ascertained or estimated annual rent, deducting the actual charges of collection, and *Malikanah* (the proprietor's income) at ten per cent ; a neat product of one hundred rupees, from lands paying no tax, was valued as equal to a product of one thousand rupees from taxable lands. But when the proprietor's allowance was calculated at ten per cent. upon the neat revenue paid to Government, and not upon the rent ; as was done when the lands were let in farm by Government, and the farmer stipulated to pay the malikanah, distinctly from the public revenue ; or when the rents were collected *khas* by the public officers, and the proprietor received ten rupees for every hundred, clear of charges and malikanah, carried to the account of Government ; the proportion received by the latter, of the aggregate payments for tax and income, was 100 rupees of 110, or ten elevenths.

siding in the interior parts of the country, whose occupations prevented their personal attendance in Calcutta, and whose circumstances would not admit of their entertaining a vakeel, at an unlimited expense, for the purpose of prosecuting an appeal, were often precluded, by the distance of their situation, from appealing against decisions with which they were dissatisfied. In addition to this impediment, arising from the local situation of the sudder dewanny adawlut, unavoidable delay, in hearing and determining the appeals preferred to that court, was frequently occasioned by interruptions to the regular sittings of the court; from the avocations of the members of government who composed it.

Provincial courts of appeal established by R. 5, 1793, to remedy the defects stated, for Bengal, Behar, and Orissa.

Section 2. Original constitution of those courts.

Provincial court for Benares established by R. 9, 1795, § 2, and for ceded provinces by R. 4, 1803, § 2. Designation of the latter court altered under R. 9, 1804. Annexations to the Benares division, made by the same regulation, and by R. 8, 1804.

With proviso, to maintain the regulations enacted for the provinces ceded by the Newab vizeer.

Provision made by R. 5, 1814, § 2, that provincial courts shall, in future, consist each of four judges.

To remedy these material defects; and, as stated, in the preamble to Regulation 5, 1793, "the jurisdiction of the courts of dewanny adawlut established in the several zillahs, and the cities of Patna, Dacca, and Moorsshedabad, being extended, not only to the causes which were cognizable in the courts of māl adawlut, but to civil suits of all descriptions between individuals; and under certain restrictions between Government and its subjects; and it being essential to the prosperity of the country, that all persons, especially the cultivators of the soil, the traders and manufacturers, and the other classes of the lower and most industrious orders of the community, in the different parts of the provinces, who may be dissatisfied with the decisions of those courts, should have an appeal to a higher court; to which they can have ready access; and that this court should be so constituted, that they may look up to it with confidence for speedy redress against unjust or erroneous decisions;" the Governor General in Council resolved, and enacted by Section 2, of the above regulation, that four courts of appeal should be established; one in the vicinity of Calcutta, and one at the cities of Dacca, Moorsshedabad, and Patna, respectively. Each court to be superintended by three judges; to be styled the first, second, and third, judge of the court, to which they might be appointed; and previously to entering upon the execution of their duties, to take and subscribe an oath, of the same tenor with that prescribed to be taken by the judges of the zillah and city courts. Three law officers, (a cauzee, moofttee, and pundit) with a register, and an establishment of ministerial officers, were also attached to each court. A fifth court of appeal, constituted in like manner, for the province of Benares, was established by Regulation 9, 1795. And a sixth court, for the ceded provinces, was instituted by Regulation 4, 1803. The designation of this court, which was originally denominated "the provincial court of appeal for the division of the provinces ceded by the Newab Vizeer," was altered, under Regulation 9, 1804, in consequence of the annexation of the territories ceded by Doulut Rao Sendheeah, to that of "the provincial court of appeal for the division of Bareilly;" at which place the court is held. By the same regulation, the territory in Boondelkhund, ceded by the Peshwa, was added to the jurisdiction of the Benares court. And by Regulation 8, 1804, the zillahs of Allahabad and Gorukhpoor, in consequence of their being more contiguous to Benares, than to Bareilly, were transferred from the jurisdiction of the provincial court for the division of Bareilly, to that of Benares; with a proviso that the courts of justice, and other public authorities, "shall be guided in their decisions and proceedings, in all matters relating to those zillahs, by the regulations which have been, or shall be enacted, in conformity to the rules prescribed in Regulation 1, 1803, for the internal government of the provinces ceded by the Newab vizeer." Experience having shown that three judges were insufficient for the due performance of the multifarious and laborious duties of the provincial courts of appeal and circuit, such parts of the regulations above cited, as provide that these courts should be superintended by three judges respectively, were rescinded by the first clause of Section 2, Regulation 5, 1814; and the following provisions were enacted in the second

and third clauses of that section. "*Second.* The provisional courts for the divisions of Calcutta, Dacca, Moorshedabad, Patna, Benares, and Bareilly, shall consist each of four judges; to be denominated the first, second, third, and fourth judges of those courts respectively. *Third.* The judges of the abovementioned courts shall exercise both civil and criminal jurisdiction, under such rules as have been or may be established for their guidance in the discharge of these important functions." It is further provided, in Section 2, Regulation 25, 1814, that "from and after the 1st February, 1815, no person shall be deemed qualified to be appointed to the office of a judge of a provincial court, or court of circuit, unless he shall have previously officiated as judge or magistrate of a zillah or city court, for a period not being less than three years; or unless he shall have been previously employed in the judicial department, or in offices requiring the discharge of judicial functions, whether of a criminal or civil nature, for a total period not being less than six years."

How to be denominated.

What jurisdiction to be exercised by them, and under what rules.

Restriction in appointment of persons to be judges of the provincial courts enacted by R. 25, 1814, § 2.

The particular zillahs and cities, included within the jurisdiction of the six provincial courts, are specified in the regulations, by which they are respectively constituted; which also direct, "that each court be held in a large convenient room, three days in every week, or oftener if the business shall require it; and that no rule, order, proceeding, or decree, shall be made, but on court days, and in open court." It was further provided in Sections 3 and 4, of Regulation 47, 1793, extended to Benares by Regulation 25, 1795, and re-enacted for the ceded provinces, in Regulation 15, 1803, that two judges should be necessary to hold a court of appeal; and that no decree in a suit or appeal before a provincial court should be valid unless passed by two judges present in court; who were to sign the decree passed by them. But an accumulation of appeals in many of the provincial courts, and the original jurisdiction vested in those courts by Regulation 13, 1808, made it necessary that the provisions abovementioned should be modified to admit of daily sittings of the provincial courts, before one or more judges of those courts. The following rules were therefore enacted in Regulation 13, 1810:—

R. 5, 1793, § 3 and 4. R. 9, 1794, § 3 and 4. R. 4, 1803, § 3 and 4.

General rules for sittings of provincial courts.

Further provisions in R. 47, 1793, R. 25, 1795, and R. 15, 1803, altered by R. 13, 1810.

§ 2. "*First.* Such part of the existing regulations as provides that two judges of a provincial court of appeal shall be necessary to hold a court of appeal, and that no decree of a provincial court shall be valid, unless passed by two judges present in court, is hereby declared subject to the following modification. *Second.* Whenever, from the absence, or indisposition, of one or more of the judges of a provincial court of appeal, or from vacancy, or any other unavoidable cause, the regular sittings of a provincial court, cannot be held before two or more judges of such court, it shall be competent to a single judge to hold the regular sittings of the court; and to pass orders, or judgment, in conformity with the regulations, subject to the following provisions. *Third.* In the trial of appeals from the decisions, or orders, of the judges, assistant judges, or registers, of the zillah and city courts, if a single judge of the provincial court, sitting upon the appeal, shall be of opinion that the decision, or order, appealed against, ought to be reversed, or altered, he shall not pass any decree or final order thereupon, until one or more of the other judges of the provincial court can sit with him upon the appeal in question. *Fourth.* No judge of a provincial court shall sit on the trial of an appeal from a judgment, or order, passed by himself." § 3. "Decisions of a single judge of a provincial court, passed in conformity with the foregoing section, shall have the same operation and effect, as decisions passed by two or more judges of a provincial court, under the regulations in force; and shall be considered appealable, or not, to the court of sudder dewanny adawlut, according to the general rules prescribed by those regulations." § 4.

Section 2. Modification of existing regulations,

which require that two judges of a provincial court of appeal shall be necessary to hold a court.

In what cases, a single judge may hold a sitting, and how to proceed

when he may be of opinion that a decision, or order, appealed against should be reversed, or altered.

Section 3. Decisions of a single judge, passed in conformity with the above section, to have the same effect as decisions of two or more judges.

Section 4. Decisions of a single judge, passed in conformity with the above section, to have the same effect as decisions of two or more judges.



Section 4.  
Rules contained in Regulation 1, 1807, applicable to single judges of provincial courts holding sittings under the present regulation, with modifications.

"*First.* The rules contained in Regulation 1, 1807, for defining the "duties to be performed, and powers exercised, by single judges of the provincial courts of appeal, in the absence of the other judges of the court," shall be

The following Sections of Regulation 1, 1807, contain the rules which are here referred to—

§ 3. "Whenever one judge only of a provincial court of appeal may be present at the station where the court is held, or though two or more judges may be present at the station, if one judge only shall be able to attend on the days fixed for the sittings of the court, which, under the regulations now in force, are to be held three days in every week, or oftener if the business shall require it, the officiating judge, so attending the court, is authorized and directed to perform the duties specified in the following section." § 4. "*First.* To execute all decrees, precepts, and orders, of the sudder dewanny adawlut, and make returns in the prescribed form in all cases of reference from that court; also to receive petitions of appeal to the sudder dewanny adawlut from the decisions of the provincial court, which may be duly presented within the fixed period; and to proceed thereupon as directed by the regulations. *Secondly.* To execute all decrees and orders which may have been passed by two or more judges of the provincial court, and which shall not have been carried into full execution; provided that this authority be not construed to empower any single judge to perfect interlocutory decrees, by passing a final judgment or order upon any point left undetermined by the decision of a competent provincial court, or generally to give any determination upon the rights of parties, which may not have been expressly adjudged at a regular sitting of the provincial court. *Thirdly.* To receive petitions of appeal from decisions of the zillah and city courts, whether transmitted by the judges of those courts, or presented, as allowed in particular cases by the regulations, immediately to the provincial court; and if the appeal shall clearly appear to be admissible under the prescribed limitations, and the petition for it shall have been duly presented within the fixed period, to admit the appeal, and issue all consequent process for the appearance of the respondent, as well as for obtaining the proceedings held upon the cause appealed. But if the petition of appeal shall not have been presented within the limited period; or, although so presented, if there appear to be any room for doubt whether the cause be regularly appealable to the provincial court, or if the petition be for a special appeal, in cases where a regular appeal is not open to the provincial court, the admission or rejection of the appeal shall be left for the consideration of a competent court; and the single judge, receiving the petition, shall merely record the receipt of it, and of the institution fee and securities required to accompany it, which shall be returned in the event of the appeal not being ultimately allowed by the provincial court. *Fourthly.* To ascertain and determine the sufficiency of securities offered for the admission of appeals, or for the fees of pleaders; or for staying the execution of decrees appealed from; to summon and examine witnesses for proving vukalutnamahs, or mokhtarnamahs; or for establishing the property of paupers; and to prepare appealed causes for trial, by receiving the pleadings of the parties, or their vakeels, and any exhibits, which may accompany them. *Fifthly.* To summon and examine any witnesses upon the merits of the case in appeal, whom the provincial court may have previously ordered to be examined: or whose evidence may be offered upon points in which the provincial court may have resolved to admit new evidence on a previous hearing of the appeal. But this authority shall not be considered to empower any single judge to summon or examine witnesses, upon any point relative to the merits of a cause in appeal, unless two or more judges of the provincial court shall have directed the examination of such witnesses; or have resolved to admit new evidence on the point or points, in proof of which such witnesses may be adduced. *Sixthly.* To proceed in causes referred for trial in the first instance to the provincial court, by the Governor General in Council, or by the sudder dewanny adawlut, in like manner as stated in the foregoing clauses respecting appeals, and under the same restrictions. *Seventhly.* To receive miscellaneous petitions relative to matters depending before, or decided by, any zillah or city court; in all cases wherein the provincial courts are authorized to receive such petitions; and to proceed thereupon as the provincial courts are empowered to proceed; except that no final order shall be passed upon the subject of any such petition, until two or more judges be present; nor shall a single judge of the provincial court be deemed competent to pass a final and conclusive order in

considered applicable to single judges of the provincial courts holding sittings under the present regulation with the following modifications. *Second.* "The sitting judge may perfect interlocutory decrees and orders passed by himself in conformity with Section 2, of this regulation, or by any other judge or judges of a provincial court, in pursuance of the regulations in force. Provided that it shall not, in any case whatever, be competent to a single judge to reverse or alter the decree, or order, of any other judge, or judges of a provincial court." *Third.* The sitting judge may determine, in the first instance, upon the admission or rejection of appeals to the provincial court, (excepting cases in which the judgment, or order, appealed from, may have been passed by himself) subject to the appeal allowed by the regulations to the court of sudder dewanny adawlut, in all cases wherein a provincial court may refuse to admit an appeal on the ground of delay, informality, or other default. The sitting judge may also determine, on the admission or rejection of all applications for special appeals to the provincial court, except in cases wherein he may have himself passed the judgment, or order, appealed from. *Fourth.* On the trial of an original cause instituted before a provincial court, as well as on the hearing of appeals to that court, it shall be competent to a single judge, holding a sitting of the court under this regulation, to pass such orders as he may deem just, and consistent with the regulations, respecting the admission of evidence, examination of witnesses, and all other points connected with the trial of the suit before the court, subject to the provision contained in Section 7, Regulation 1, 1807; whereby the provincial court at large, or any two judges of the court, are declared at liberty to re-examine witnesses, whose depositions may have been taken before a single judge, if it appear requisite; to examine any other witnesses in the cause;

*Sitting judge may perfect interlocutory decrees and orders passed in conformity with Section 2, of this regulation.*  
*Proviso, in what cases the sitting judge may determine, in the first instance, on admission, or rejection of appeals to the provincial courts.*  
*Sitting judge may pass orders on admission of evidence, examination of witnesses, and other points, subject to the provision in Section 7, Regulation 1, 1807.*

any case whatever. *Eighthly.* To correspond with the Governor General in Council, with the sudder dewanny adawlut, with the other provincial courts of appeal, with the zillah and city courts, and generally with all public officers, in like manner as the provincial courts are authorized to correspond with such public officers; and to perform all miscellaneous duties, arising out of such correspondence, or incident to the necessary discharge of the usual functions of an officiating judge of a provincial court of appeal. Also to furnish the monthly and other periodical reports and accounts prescribed by the regulations; or required by the orders of Government, or of the court of sudder dewanny adawlut." § 5. "In the execution of the duties prescribed by the preceding section, a single judge of a provincial court or an acting judge appointed to officiate as such, when none of the judges of a provincial court may be present at the station where the court is held, shall possess the same powers as are vested by the regulations in the court collectively, subject to the several restrictions specified, and also to the further restriction noticed in the following section." § 6. "In the event of any witness, who may be examined by a single judge of a provincial court, or by a person appointed to officiate as such, or by the register of the provincial court acting under the orders of a single judge, appearing to be guilty of perjury, so as to merit commitment for trial before the court of circuit, in pursuance of the provisions made by the regulations, for that purpose; the judge may cause such witness to be held to bail, or if satisfactory bail be not given for his appearance at the first regular sitting of the provincial court, may cause him to be kept in custody until he can be brought before two or more judges of the provincial court; but shall not pass a final order, to commit the witness for trial on a charge of perjury, until the grounds of it shall have been submitted for the determination of a competent court." § 7. "The powers vested by this regulation in a single judge of a provincial court of appeal shall not be construed to prevent the court at large, or any two judges of the court, from re-examining witnesses whose depositions may have been taken before a single judge, if it appear requisite; or from examining any other witnesses in the cause; or generally from passing any order that may appear proper and consistent with the regulations; whether in addition to, or in qualification or abrogation of, any previous order of a single judge."

A single judge may commit, or hold to bail, for trial before a court of circuit witnesses guilty of perjury.

Sitting judge may proceed, as the provincial court are empowered to proceed, on miscellaneous petitions, under restrictions stated.

Section 5. Rule for daily sitting of the provincial courts, under provisions of this Regulation.

Additional provisions enacted in R. 25, 1814.

Section 6. In what cases separate sittings of the provincial courts may be held before one or more judges of those courts.

Under what restriction single judges may pass orders or judgments, in such cases.

Section 7. Rules in Sections 3 and 4, R. 13, 1810, applicable to powers and duties of single judges of the provincial courts under the present regulation.

Section 8. Powers of single judges of the provincial courts sitting upon appeals in succession, and concurring in opinion.

and generally to pass any order that may appear proper and consistent with the regulations, whether in addition to, or in qualification, or abrogation of, any previous order of a single judge. *Fifth.* In the event of a witness, in a case brought before a single judge under this regulation, appearing guilty of wilful perjury, as defined in Section 4, Regulation 2, 1807, it shall be competent to the sitting judge to order that such witness be committed, or held to bail, for trial before the court of circuit. *Sixth.* A single judge, holding a sitting of the provincial court, under this regulation, may receive miscellaneous petitions, relative to matters depending before, or decided by, any zillah or city court, in all cases wherein the provincial courts are authorized to receive such petitions; as well as all other petitions which the provincial courts are authorized by the regulations to receive; and to proceed thereupon as the provincial courts are empowered to proceed, under the restrictions stated in this regulation." § 5. "Under the provisions of this regulation, the sittings of the provincial courts shall be held daily, (Sundays, established holidays, and authorized vacations excepted,) before one or more of the judges of these courts; or if any circumstance, (except the intervention of Sundays, holidays, and vacations,) should prevent a daily sitting for two days successively, the same shall be reported for the information of the sudder dewanny adawlut."

The following additional provisions have been enacted in Regulation 25, 1814.

§ 6. "In addition to the provision made by clause second, of Section 2, Regulation 13, 1810, for the regular sittings of the provincial courts being held before a single judge, whenever from the absence, or indisposition, of one or more of the judges of a provincial court, or any other unavoidable cause, the regular sittings of a provincial court cannot be held before two or more judges of such court, it is hereby provided, that whenever from the number of original causes and appeals, depending before a provincial court, it may appear requisite, for the speedy trial and decision of such causes and appeals, or for the general dispatch of business depending before the court, that separate sittings of the court should be held at the same time, before one or more judges respectively, and the number of judges present at the station may admit of such separate sittings being held, it shall be competent to the judges of the provincial courts to hold the same, and to pass orders, or judgments, in conformity with the regulations, subject to the same restrictions when the sitting may be held before a single judge, as are prescribed by the rules in force, with respect to single judges of the provincial courts holding sittings of those courts, under the provisions of Section 2, Regulation 13, 1810." § 7. "The rules contained in Sections 3 and 4, Regulation 13, 1810, respecting decisions passed by a single judge, and the general duties to be performed and the powers to be exercised by single judges of the provincial courts, under that regulation, shall be considered equally applicable to the powers and duties of single judges of the provincial courts, and to decisions passed by them, under the present regulation." § 8. "In modification of the third clause of Section 2, Regulation 13, 1810, requiring the sitting of two judges to reverse or alter a decision or order appealed to a provincial court, and of such part of any other regulation in force, as directs that decrees are to be signed by the judges passing the same; it is hereby provided, that when a single judge of a provincial court, trying a case in appeal from a zillah or city judge, assistant judge, or register, shall be of opinion, that the decision appealed from, ought to be reversed, or altered, and shall record his sentiments to that effect; and another judge of the provincial court, sitting afterwards upon the same appeal, shall concur in the opinion so recorded, it shall be competent to the second judge to pass the decree, or final order,

in conformity thereto, and to cause the same to be carried into execution, in the mode prescribed by the regulations; without waiting for a sitting of both judges, when circumstances may not conveniently admit of it. In such cases, the decree or order shall be signed by the judge present at the final sitting; and the signature of the judge who first sat shall not be considered requisite; but his opinion, as recorded by him, shall be recited in the decree or final order, and in the copies of it delivered to the parties." § 9. "First. Such parts of the regulations in force as provide, in cases of a difference of opinion between two judges of the provincial courts of appeal, that the senior judge shall have a casting vote, in affirming, reversing, or altering the decree or order of a zillah or city court, when the case may be further appealable to the court of sudder dewanny adawlut, or a casting voice in affirming the decree or order of a zillah or city court, but not in reversing or altering it when the decision of the provincial court may be final, are hereby rescinded. Second. Whenever two judges of a provincial court may try an appeal from the decision or order of a judge, assistant judge, or register, of a zillah or city court, and a difference of opinion may arise between such judges, the determination of the provincial court shall be suspended until the opinion of a third judge of that court can be taken, when the decision shall be passed according to the majority of voices. Third. The rules stated in the above clause shall also be observed in all civil suits, tried by the provincial courts in the first instance, wherein a difference of opinion may arise between two of the judges of those courts, sitting on the trial of such suits. Fourth. The same principle shall be observed in all other business of a general or miscellaneous nature before two judges of a provincial court, when a difference of opinion may arise between them; and in general, when there may not be a third judge present at the station, the decision of the question shall be postponed for the attendance of another judge. But in cases not involving any matter of judicial cognizance, if a third judge be within the division, though not at the sudder station, and the business appear to require an early decision, the papers relative thereto may be sent to him for his written opinion, and on receipt thereof, a determination shall be passed according to the majority of voices. Fifth. If in any instance a difference of opinion should take place in questions before four judges of a provincial court, and the number of voices be equal, the first judge, concurring with any one of the other judges, shall possess a casting vote, and the resolution shall be passed accordingly." § 10. "First. By Section 4, Regulation 1, 1807, and Section 4, Regulation 13, 1810, single judges holding sittings of the provincial courts of appeal under the provisions of those regulations, are empowered to perform all miscellaneous duties appertaining to the provincial courts, and to proceed as two or more judges of those courts are empowered to proceed, except when they may be of opinion, that the order of a zillah or city court, or the order of another judge of the provincial court, should be reversed, or altered. It having been doubted whether the powers, thus vested in a single judge, include the appointment and the removal of the ministerial native officers of the zillah or city civil courts, whose appointment and removal, on reports from the zillah and city judges, are or may be vested in the provincial courts; it is hereby declared that single judges of the provincial courts, holding sittings of those courts, under the provisions contained in Regulation 13, 1810, or the present regulation, are empowered to proceed in like manner as two or more judges of the provincial courts are empowered to proceed under Section 7,

Decree or order may be signed by the judge present at the final sitting in such cases.

Section 9. Parts of the regulations in force, which give a casting vote to the senior judges of the provincial courts repealed.

Rule to be observed when a difference of opinion may arise between two judges of a provincial court trying an appeal. Or when two judges, trying an original suit, may differ in opinion.

The same principle to be observed in all other business before two judges of a provincial court. In what cases the papers may be sent to a third judge not at the sudder station, for his opinion.

Rule to be observed, on a difference of opinion between four judges.

Section 10. What powers may be exercised by single judges of the provincial courts, with respect to the appointment and removal of ministerial native officers of the zillah and city courts.

\* The rescinded provisions here referred to were enacted in Section 2, of Regulation 47, 1793; extended to Benares by Regulation 25, 1795; Section 7, of Regulation 3, 1797; and Sections 2 and 7, of Regulation 15, 1808.

And of ministerial native officers of the provincial courts.

Original jurisdiction of provincial courts, under R. 13, 1808, § 3; and R. 25, 1814, § 5; modified by R. 19, 1817, § 2.

R. 13, 1808, § 5. Disputes between parties respecting any cause, instituted in a provincial court, being cognizable in the first instance by that court, how and under what rules to be decided.

If decided, to be cognizable by a zillah or city court; to be instituted, de novo, in such court.

R. 25, 1814, § 5. In what cases suits exceeding one thousand rupees in

Regulation 8, 1809, 'except when they may differ in opinion from the zillah or city judge, respecting the appointment or removal of any native officer of the zillah or city courts; in which case the question shall be brought before two or more judges of the court. *Second.* A single judge holding the sittings of the provincial court shall be competent to suspend any ministerial native officer of that court, but shall not be competent to pass any final order or decision regarding the removal or appointment of any native ministerial officer of a provincial court; all questions which may arise respecting the appointment or removal of such officers shall be brought before two or more judges of the court; and shall be decided, in cases of a difference of opinion, in conformity with Section 9, of this regulation."

The original jurisdiction vested in the provincial courts, by Section 3, Regulation 13, 1808, and Section 5, Regulation 25, 1814, for the trial, in the first instance, of "all regular suits, for an amount in value, exceeding five thousand sicca rupees," has been already stated, under the head of *Zillah and City Civil Courts*; together with a modification of those rules, contained in the second clause of Section 2, Regulation 19, 1817; viz. "If the amount or value of the claim (calculated in conformity with Section 14, Regulation 1, 1814, and Section 23, Regulation 26, 1814,) be more than five thousand, but not exceeding ten thousand sicca rupees, it shall be optional with the plaintiff to institute a regular suit, in the first instance, either in the provincial court of the division, under the rules now in force; or in the dewanny adawlut of the zillah or city in which the land, house, or other immovable property, constituting the subject of the suit, may be situated; or if the suit be not for immovable property, in the dewanny adawlut of the zillah or city, in which the cause of action may have arisen; or the defendant may reside as a fixed inhabitant, when the suit against him is commenced." But it will be proper to insert in this place the following provisions enacted in Section 5, Regulation 13, 1808, for cases in which the defendant, in an original suit, instituted in a provincial court, may deny its being regularly cognizable, in the first instance, in such court. "*First.* In suits which may be instituted in the provincial court, if the plaintiff shall state his cause of action to exceed five thousand sicca rupees, and the defendant shall, in answer, deny such statement, and allege the produce, amount, or value, to be such as to render the suit cognizable by the zillah or city court, in the first instance; the provincial court shall cause such inquiry to be made, as may appear necessary, to ascertain whether the suit be cognizable in the zillah, city, or provincial court, under the provisions of this regulation; and the determination of the provincial court, upon this point, shall be final. Provided, that no such objection to the plaintiff's statement of the cause of action shall be received from the defendant, unless offered, in answer to the plaint, in the first instance. *Second.* In the cases provided for in this section, if the provincial court determine that the suit is cognizable in the zillah or city court, the institution fee paid by the plaintiff shall be returned to him; and he shall be left to institute his suit, de novo, in the zillah or city court. If any pleaders shall have been employed in the provincial court, that court shall adjudge to them such proportion of the established fee, not exceeding one fourth, as they may judge adequate; to be paid by the plaintiff."

In addition to the regular original jurisdiction of the provincial courts, as above stated, it is provided in the first clause of Section 3, Regulation 25,

\* This Section, and the whole of the rules contained in Regulation 8, 1809, "respecting the appointment and removal of the native officers of Government, in the judicial, revenue, and commercial departments;" are cited at length in the second volume of this Analysis, page 155.

1814, that "if it shall at any time appear that, from the pressure of business in any zillah or city court, suits exceeding one thousand rupees in value or amount can be more conveniently and expeditiously tried in the first instance, by the provincial court of the division, than by the zillah or city court before which they may be depending, it shall be competent to the sudder dewanny adawlut to order the transfer of all or any of such suits to the said provincial court." It is added, in the second clause of Section 3, Regulation 19, 1817, that "it shall be competent to any plaintiff, who may have instituted in a zillah or city court a suit transferable to a provincial court, to petition the provincial court for the transfer of such suit; and if sufficient reason appear for the transfer desired; such as considerable delay in the trial of the suit, by the zillah or city court; the provincial court will transmit the petition for the orders of the sudder dewanny adawlut."

Under the original regulations of 1793, an appeal was allowed, in all cases, from the decisions of the zillah and city courts to the provincial courts of appeal. But to prevent the time of the latter from being occupied by petty causes, it was afterwards judged expedient (by Regulation 8, 1794,) to vest the zillah and city judges with a final power of decision, in suits for money or personal property not exceeding in amount or value twenty-five sicca rupees; and by Regulation 36, 1795, their decrees were declared final in appeals from decisions for money or personal property, passed by their registers under Regulation 8, 1794; or the native commissioners appointed under Regulation 40, 1793. These provisions for Bengal, Behar, and Orissa, were extended to the province of Benares, by Regulation 54, 1795. But by Regulation 49, 1803, they were rescinded for the whole of those provinces, and new rules were enacted in Regulations 49, 1803, and 8, 1805, whereby an appeal to the provincial court was open, in certain cases only, when the suit might have been tried and decided in the first instance by the zillah or city registers; and afterwards tried in appeal by the judge of the zillah or city court: but an appeal to the provincial court was allowed in all cases that might be tried and decided by the zillah or city judges in the first instance. The rules last mentioned were however rescinded by Section 2, of Regulation 24, 1814; and the general provisions, now in force, for appeals to the provincial courts, in regular suits, are contained in the following clauses of Section 3, Regulation 25, 1814:—"Third. An appeal shall lie to the provincial courts from the decisions passed by the zillah and city judges, on all regular civil suits tried and determined by them in the first instance; as well as from the decisions which may be passed by registers under clause sixth, Section 9, Regulation 24, 1814, in suits exceeding five hundred rupees in value or amount. Fourth. The provincial courts are further empowered to admit a second or special appeal from decisions passed by the zillah and city judges, on regular appeals from the original judgments of registers, sudder ameenas, and moonsiffs. Such special appeals are to be admitted and tried under the rules and restrictions contained in Section 2, Regulation 26, 1814. Fifth. Nothing in this regulation shall be construed to prohibit the provincial courts from applying for permission to review their own judgments, or from admitting summary appeals, in the cases provided for by clause third, Section 3, Regulation 26, 1814."

It being a general rule for the trial and determination of all suits and appeals before the provincial courts, that they are to proceed, except as to hearing witnesses and receiving evidence, "in the same manner and with like

amount or value may be transferred from a zillah or city court to a provincial court, by order of the sudder dewanny adawlut.

Further provision for such cases in R. 19, 1817, § 3.

R. 3, 1793, § 20. R. 5, 1793, § 12. General appeal to the provincial courts, allowed by the regulations of 1793. Limited, in certain cases, by subsequent regulations.

Rules now in force, enacted in R. 25, 1814, § 3.

Clause 3. In what cases an appeal lies to the provincial courts from decisions of the zillah and city judges, and registers, in regular suits.

Clause 4. In what cases second or special appeals may be admitted by provincial courts.

Clause 5. Provisions for reviews, and summary appeals, not affected by this regulation.

R. 5, 1793, § 11, extended to Benares by R. 9, 1795; and re-enacted for ceded provinces in R. 4, 1803, § 11.

\* The rules for special and summary appeals, which apply generally to the zillah and city courts, the provincial courts, and the court of sudder dewanny adawlut, will be stated in the sequel.

R. 5, 1793, § 12.  
R. 4, 1803, § 12.  
R. 2, 1805, § 8.  
modified by  
Clause 10, § 8,  
R. 26, 1814,  
above cited.  
Time limited  
for preferring  
appeals.

But courts of  
appeal may  
admit them, af-  
ter prescribed  
period, on suf-  
ficient cause.

Security re-  
quired to stay  
execution of  
decrees during  
appeals.  
And original  
rules on this  
subject in R.  
5, 1793, § 12  
and 14.

Further provi-  
sions enacted  
in R. 13, 1796.  
Section 2.  
Execution of  
decrees ap-  
pealed from,  
whether pas-  
sed in a zillah,  
city, or pro-  
vincial court,  
to be suspend-  
ed during the  
appeal under  
the prescribed  
security.

The period limited for, appeals to the provincial courts is three months<sup>1</sup> from the date on which the decision appealed from may have been passed; if the appeal be preferred in the provincial court; or three months exclusive of the interval that may elapse, between the time of the party's furnishing the requisite stamp paper, for a copy of the decree, and the date on which a copy of the decree may be tendered to the party in open court, if the petition of appeal, with an authenticated copy of the decree, be presented to the court of sudder dewanny adawlut; and it is declared in Section 10, Regulation 2, 1798, re-enacted for the ceded provinces in the sixth clause of Section 12, Regulation 4, 1803, that the presenting a petition of appeal before the expiration of the time limited, without the prescribed security for costs,<sup>2</sup> or proof of inability to furnish the same, (under the rules hereafter mentioned for paupers) shall not be considered to preserve the appellant's right of appeal. But the provincial courts of appeal are, in all cases, authorized to admit the appeal after the expiration of the prescribed period, if the appellant can show just and reasonable cause, to their satisfaction, for not having preferred it within the time limited; recording their reasons for admitting it in such cases.

If the appellant be desirous of staying the execution of the decree passed against him, during the trial of his appeal from it, he is further required to give good and sufficient security, in a sum equal to one year's produce of the property adjudged, if the decree be for land, or any description of real property; or, in other cases, in an amount equal to the sum or value decreed; for the performance of the decree which may be passed upon the appeal. In the original rules of 1793, if the decree were not for land, or other real property, the zillah, city, and provincial courts, were authorized to carry their judgments into execution, notwithstanding an appeal, provided sufficient security were given by the respondent for performing the ultimate judgment on the appeal. But as decrees for money, in many instances, cannot be enforced without a sale of property, or personal confinement; both which appeared liable to objection, whilst there was a possibility of the judgment passed in the first instance, being reversed, or qualified, on the appeal; the following rules were enacted in Sections 2 and 3, of Regulation 13, 1796:—  
§ 2. "In all authorized cases of appeal from the decrees of the zillah or city courts to the provincial courts; or from the decrees of the provincial courts to the sudder dewanny adawlut; the court in which the decree appealed from may have been passed, shall suspend the execution of it during the appeal, provided the party, against whom the decree may have been passed, shall, at the time of preferring his appeal, or within such reasonable period afterwards as may be fixed for the purpose, deliver the security required by the existing regulations, viz. if the decree be for a zemindary, talook, or other land, or for a house or other real property, good and sufficient security in a sum equal to one year's produce thereof; and in all other cases, good and sufficient security in an amount equal to the sum of money or value of the thing decreed, for the performance of the decree,

<sup>1</sup> Three calendar months are specified in the regulations; and the sudder dewanny adawlut, in a case before that court on the 26th September, 1797, declared their opinion that three months of the English calendar were intended; but as the regulations do not expressly state English months, and the appellants had preferred their appeal within three Bengal months, and pleaded ignorance of the English calendar, the court admitted their appeal.

<sup>2</sup> The rule for costs, in the regulations cited, is that "in all authorized cases of appeal, the party desirous of appealing is, with his petition of appeal, to deliver good and sufficient security for the payment of the costs that may be awarded on the appeal."

which may be passed upon the appeal. § 3. To prevent an abuse of the above rule, and the encouragement of litigious appeals, the provincial courts of appeal, in all cases wherein they may confirm the decree of a zillah or city court, and the sudder dewanny adawlut, in all cases wherein it may confirm the decree of a provincial court, are to adjudge interest at the rate of one per cent. per mensem on all sums, receivable by the respondent under the decree passed in his favor, from the date of such decree, and are authorized to punish appeals which may appear to them litigious, by a fine to Government, proportionate to the condition of the party, and the circumstances of the case."

The following additional provisions were enacted in Regulation 5, 1798 :  
 § 3. "Notwithstanding the appellants in causes depending before the sudder dewanny adawlut, and the provincial courts of appeal, may have entered into the security required of them by Section 2, of Regulation 13, 1796, those courts are authorized, in cases, wherein from delay in the decision, the security so given may appear insufficient, on the application of the respondent or respondents in all such cases, to require any additional security which they may deem necessary to secure the party who may have obtained a judgment in his favor, from any loss by the non-execution of such judgment during the appeal; and in default of such further security being given within a reasonable period, to be fixed for that purpose, the courts are empowered to direct the judgment in question to be carried into execution, in like manner as if no security had been given by the appellant; provided that in such cases good and sufficient security, as prescribed by the regulations, be given by the respondent, previous to his being put in possession of the property in litigation."  
 § 4. "In all instances wherein the plaintiff in a zillah or city court may obtain a judgment in his favor for land or other real property, and the defendant appealing therefrom to a provincial court, may be left in possession of the property, under the security prescribed by the regulations, any private transfer of such property by sale, gift, or otherwise, or any mortgage thereof which might be made by such appellant during the appeal to the provincial court, or during a further appeal to the court of sudder dewanny adawlut, would, in the event of the judgment against him being confirmed on the appeal, be of course, and is hereby declared to be, null and void: but as malguzarry lands (lands assessed with the public revenue) are in all cases, by whomsoever possessed, held answerable for the public revenue assessed thereon, and as according to the general rules established for the collection of the public revenue, such lands, and also lakheraj lands, and other property appertaining to the same estate, may become liable to sale by Government, from the neglect of the party in possession to discharge the revenue due therefrom, by which sale, in cases of appeal, the party to whom the property of the lands is ultimately adjudged, might, notwithstanding be deprived of it, unless he purchased the same at the public sale; to obviate all doubt respecting the right of the party making the purchase in such cases, it is hereby declared, that whenever any land or other property, for which a judgment may have been obtained in any of the established courts of justice, but which, during an appeal from such judgment by the party cast, may be left in the possession of the appellant, shall, while such appeal is pending, or before the ultimate judgment thereon be put in execution, be sold by Government to make good an arrear of the public revenue due from the appellant; and shall be purchased by the respondent; the party so purchasing, in the event of such property being finally adjudged to him on the appeal, shall be entitled to recover from the appellant, so left in possession, the full amount of his purchase money, and of all expenses attending the purchase so made by him, with interest thereon at the rate of twelve per cent per annum, in addition to any

Section 3.  
Interest to be allowed on sums adjudged by the decree appealed from, if confirmed, and litigious appeals to be punished by fine.

Additional provisions in R. 5, 1798.  
 Section 3.  
 Courts of appeal may in particular cases require further security during appeals, if, on application of the parties, the security taken appear insufficient.  
 In default of such further security being given by appellants, the judgment to be executed.  
 Provided the prescribed security be given by the respondent.  
 Section 4.  
 Any private transfer or mortgage of land, or other real property, during appeals, declared null and void, in the event of the judgment against such property being confirmed on the appeal.  
 Provision for the public sale of the property adjudged, in such cases, on account of the public assessment.  
 Rights of respondent in such cases, who may purchase the property sold by government, and ultimately adjudged to him on the appeal.



Rights of respondent in such cases, who may not purchase the property sold by Government, and ultimately adjudged to him on the appeal.

Section 5. Principles of the preceding section declared to extend to all similar cases whether the original plaintiff or defendant or the appellant or respondent, be left in possession of the property during an appeal to the provincial courts, or to the sudder dewanny adawlut, or to the King in Council.

Section 6. Provision for cases wherein neither the appellant or respondent may be able to give the prescribed security for staying the execution of decrees during appeals. The collectors, under certain restrictions, to hold the adjudged property in attachment, in such

Foregoing rules re-enacted for ceded provinces in R. 4, 1803, § 12, 14; and R. 5, 1803, § 9. But modified for all the provinces under the presidency of Fort William by R. 13, 1808.

other sum which may be adjudged due to him on account of the profits arising from the land, or other property in question, anterior to the sale. It is further declared that in the case above supposed, if the respondent shall not have purchased the land, or other property, sold by Government to make good an arrear of public revenue due from the appellant left in possession thereof; and if the ultimate judgment on the appeal be in favor of such respondent, he shall be entitled to recover from the appellant left in possession the amount of the purchase money paid for the property so sold, and adjudged to the respondent; with interest thereon at the rate of twelve per cent per annum, in addition to any other sum which may be adjudged to him on account of the profits, arising from the property so sold anterior to the sale of it; unless the property in question shall have been directly or indirectly purchased by the appellant himself, or in his behalf, at the public sale; in which case, on clear proof thereof being made by the respondent to whom such property may be ultimately adjudged, he shall be entitled to the possession thereof, and to all profits arising therefrom, as may be directed by the decree in the case, notwithstanding the fictitious sale supposed." § 5. "The principles of the rules contained in the two preceding sections, are to be considered equally applicable to cases in which the plaintiff in a zillah or city court may be put in possession of land, or other property adjudged to him, during an appeal, in consequence of the defendant's failing to give security for staying the execution of the decree as required by the regulations; and generally to all cases in which the possession of property may be transferred by the decree of any court of justice; from which decree an appeal may be depending in a superior court; whether a provincial court of appeal; or the court of sudder dewanny adawlut; or his Majesty in Council, in the cases for which an appeal to him is provided by Regulation 16, 1797, and the act of parliament therein recited." § 6. "As cases may occur wherein neither the appellant nor the respondent may be able to give the prescribed security for staying the execution of decrees, or for the execution thereof in favor of the plaintiff, as provided in Section 2, of Regulation 13, 1796, and Section 3, of this regulation, it is hereby enacted, that in all such cases, the property adjudged, shall be held in attachment during the appeal, or until such time as one of the parties may be able to give the required security, by the collector of the district wherein the land may be situated, at the expense of the party who may be ultimately declared entitled thereto; and under the provisions contained in Regulation 45, 1793, relative to the attachment of lands for sale in pursuance of decrees of the courts of justice, as far as the same are applicable. No attachment, however, is to be made by any collector in the cases herein supposed until he receive a precept, requiring him to make the same, from the zillah or city court wherein the original judgment in the cause may have been passed; which precept shall state specifically the property to be included in the attachment, and shall require the collector to continue the same till ordered to be withdrawn by a further precept from the court, to be issued either on the prescribed security being given by one of the parties, or on the cause being finally determined."

The foregoing rules were re-enacted in substance, for the ceded provinces in Regulations 4 and 5, 1803. But the general office given to appellants to retain possession of the property adjudged against them until a final decree be passed, having been found to encourage groundless appeals for the sole purpose of keeping possession of the property in dispute; especially when the suit respected land, houses, or other immovable property, the following modified rules were enacted, for all the provinces under the presidency of Fort William in Regulation 13, 1808.

§ 11. "First. Such part of the existing regulations, as directs that de-

crees appealed from, in cases of land, houses, or other immovable property, adjudged against the appellant, shall not be carried into execution during the appeal, provided the appellant give good and sufficient security for performing the decree which may be passed upon the appeal, in a sum equal to one year's produce of the property adjudged, is hereby modified, as follows.

*Second.* Whenever a person claiming the proprietary right in land, houses, or other immovable property, not in his possession, shall obtain a decree, upon investigation of the merits of the case (whether in a zillah or city court, or in a provincial court of appeal, before which the suit may be tried in the first instance) adjudging him to be the proprietor of such land, houses, or other immovable property; he shall obtain possession thereof in execution of such decree, notwithstanding an appeal therefrom, provided he shall give good and sufficient security, for performing the decree which may be passed upon the appeal, in a sum equal to one year's produce of the property adjudged, if malgoozarry land; or ten years' produce, if the land be lakheraj; or the computed value, if it be a house, or immovable property of any other description. *Third.* Provided however that if the court, to which the appeal may be preferred in such cases, shall, in any instance, see special cause for leaving the appellant in possession during the appeal, it shall be competent to that court to order the same; requiring, in such case, from the appellant, the same security as is above required to be given by the respondent. *Fourth.* Provided further, that whether the appellant or respondent be left in possession of lands paying revenue to Government, during an appeal, if the party in possession of such lands shall neglect to pay the revenue due upon the assessment; and a public sale shall in consequence be ordered to take place; the party not in possession, by payment of the revenue due, and giving the prescribed security, previously to the sale, shall be put in immediate possession; and shall be entitled to charge the amount so paid, with interest thereupon, at the rate of one per cent. per mensem, in any adjustment of accounts which may be directed in the final decree upon the cause." § 12. "*First.*

The provisions contained in the preceding section not being applicable to the execution of decrees for money, or other movable property; such decrees shall be stayed, or enforced, in cases of appeal, according to the rules now established with the following addition thereto. *Second.* The security to be given by appellants for staying the execution of decrees appealed from, in cases of money, or other movable property, or by respondents, when such decrees are carried into execution during an appeal, shall be sufficient, in addition to the amount or value adjudged, to cover the interest that may be expected to arise upon the amount payable under the decree, if confirmed in appeal, according to the provision for adjudging interest in such cases, made by Section 3, Regulation 13, 1796, and Section 35, Regulation 4, 1803."

§ 13. "The judges of the several courts, by which security may be taken from appellants or respondents, for performing the decrees to be passed on appeals, are enjoined to be particularly careful in ascertaining that the security received is good and sufficient; and they are required, in all cases, to cause the nazir or other officers, by whom the property of the sureties may be ascertained, to deliver in as accurate a statement as can be obtained of such property; with a full report of the inquiry made respecting it; informing him, at the same time, that he will be held responsible for any wilful misrepresentation in his statement or report." To the above rules must be subjoined Section 13, of Regulation 26, 1814, viz. "*First.* The following provisions are enacted in addition to the rules now in force regarding the security to be required from parties for the execution of decrees of the civil courts, or for staying the execution of judgments in the civil suits during an appeal in such suits. *Second.* All persons who may enter into security

Section 11. Modification of existing rules for staying the execution of decrees during appeal in cases for immovable property. Persons suing for such property and obtaining a decree for it to have possession notwithstanding an appeal, on giving prescribed security.

Unless the court to which the appeal is preferred, see cause for allowing the appellant to retain possession. Provision for cases of non-payment of revenue of disputed lands during an appeal.

Section 12. Present rules for staying the execution of decrees during appeal, in cases for movable property, to remain in force with following addition. What security to be given by appellants in such cases.

Section 13. Judges taking security in cases of appeal to be careful that it be good and sufficient. Measures to be adopted for this purpose.

R. 26, 1814, § 13. Additional rules regarding security furnished in civil suits. Sureties prohibited from

transferring their rights in any immovable property on which their security may have been accepted. Explaining the purport and intent of the foregoing prohibition.

bonds for the purposes mentioned in the preceding clause, are prohibited from transferring, or from causing to be transferred, by sale, gift, mortgage, or otherwise, any land or other immovable property belonging to them, and specified in the schedule of property on which their security may have been accepted, until the object of their security shall have been completely fulfilled. *Third.* This prohibition however shall not be construed to affect the legality of any private transfer or mortgage of such property, in cases in which the amount of any demand on the surety, which may eventually arise under the terms of the security bond, shall be duly discharged by him; but it is hereby declared, that no private transfer or mortgage of such property which may be made by a surety in the interval between the execution of the security bond, and the final and complete enforcement of the judgment, shall be considered to bar the prior right of the court to hold the whole or any part of such property answerable in the first instance for the amount of any demand upon it, which may eventually arise under the terms of the security bond, and which may not be duly discharged by the surety."

R. 5, 1793, § 12 and 14.  
R. 12, 1797, § 3 and 4.  
R. 4, 1803, § 12 and 13.  
Zillah or city court, how to proceed, when the cause is appealable, and the petition of appeal duly presented, with its required accompaniments.

When a petition of appeal and its required accompaniments are delivered, within the prescribed period, to the zillah or city court; and the cause is clearly appealable to the provincial court; the judge receiving the petition of appeal is to transmit it (with a copy of the decree appealed from; an extract from his proceedings showing the performance of the conditions of appeal; and information whether the decree has been put in execution, or otherwise;) to the provincial court; and is at the same time to cause notice in writing to be given to the appellant that, within fifteen days, the proceedings held in the cause will be certified to the provincial court; and that if he shall not proceed in the appeal within six weeks after the petition of appeal shall have been filed in the provincial court, his appeal will be dismissed; unless he shall show reasonable cause, to the satisfaction of that court, for not having proceeded in it.<sup>1</sup> The judge is further directed, within fifteen days after the receipt of the appeal, to certify under his hand and official seal, to the register of the provincial court, the record duly made up and authenticated; including the original complaint, answer, replication, and rejoinder; the depositions, exhibits, and every other original paper, read in the cause: keeping attested copies thereof, as records of the zillah or city court. If any original paper cannot be transmitted, from having been entered in a book relating to other causes; or from its being lost or mislaid; an authenticated copy, or transcript of the entry, of such original paper, is to be certified to the provincial court. This rule however applies only to cases in which the appeal may have been regularly preferred to the zillah or city judge, within the prescribed period, and he may entertain no doubt that the cause is appealable under the regulations. If it appear to him not to be appealable, or if the petition of appeal be not delivered to him, as required, within the time limited, he may reject the petition; furnishing the party with a copy of his order of rejection; and wait instructions from the provincial court.<sup>2</sup> On receipt of the petition of appeal by the provincial court, (whether transmitted to it by the zillah or city judge, or presented to it by the appellant or his vakeel,) if

In what cases the zillah or city judge may reject the petition of appeal; furnishing the party with a copy of his order of rejection.  
R. 5, 1793, § 15 and 16.  
R. 4, 1803, § 15, 16, and 17.  
In what manner the provin-

<sup>1</sup> The prescribed written notification to the appellant must be given in all cases; although he may be verbally informed of the admission of his appeal; or may know it from his vakeel; and an omission of the notice required by the regulations will save the appellant from dismission of his appeal for non-attendance to prosecute it. This was determined by the court of sudder dewanny adawlut in a case before it (Krishn Dut, versus Kahar Singh,) on the 6th July, 1796.

<sup>2</sup> This is not expressly stated in the regulations; but is clearly inferable from the rules prescribed.

the appeal be admitted, a summons is issued to the respondent, through the judge of the court in which the cause may have been tried; who is at the same time required to certify the record of the original trial, if the petition of appeal shall not have been received from him in the first instance. If the respondent is not to be found, or from whatever cause the summons cannot be served upon him, the judge is to proceed by proclamation, in the same manner as already stated with regard to defendants in the zillah and city courts, upon whom a summons cannot be served; and if, after such proclamation, the party shall not appear as required, either in person or by vakeel, the provincial court is to try and determine the cause *ex parte*, in the same manner as if the respondent had appeared.

The following rules for pleadings on appeals are enacted in Section 9, Regulation 26, 1814.

"*First.* Such parts of the regulations in force, as require that the pleadings in appealed suits be conducted and filed in the same manner and under the same rules as pleadings in original suits are hereby declared subject to the following modifications. *Second.* In all regular civil suits which may be appealed subsequently to the 1st of February, 1815, to a zillah or city court, to a provincial court, or to the sudder dewanny adawlut; it shall be left to the option of the respondent either to file an answer to the petition and reasons of appeal, or not, as he may judge proper; provided however, that if no answer shall be filed by a respondent, it shall be competent to the court trying the appeal, in all cases, in which it may be deemed expedient, to direct the respondent to file an answer to the petition of appeal, or to any particular points in it, which may appear to require an answer or explanation. *Third.* No further pleadings beyond the answer of the respondent shall be admitted in any appealed suits, which may be instituted subsequently to the 1st February, 1815, except the duplicate of the plaint provided for by Clause First, Section 7, of this regulation, or such supplemental pleadings as may be authorized by the court under the provisions of Clause Third, Section 6, of this regulation."

The provincial courts are empowered, in cases which may appear to them not to have been sufficiently investigated in the zillah or city court, or for any other cause that may be deemed reasonable by them, either to receive such further evidence as they may think necessary for the just determination of the suit, and give judgment thereupon; or to refer the suit back to the court in which it originated, with special directions to the judge regarding the new evidence he is to receive respecting it; as may be deemed by the court most conducive to justice and the convenience of the parties and witnesses; recording in every case their reasons for exercising the power thus vested in them.<sup>1</sup> If the provincial court judge it proper to receive further evidence

cial court proceeds on receiving a petition of appeal. And process against respondents upon whom the summons cannot be served.

In what case the appeal to be tried *ex parte*.

R. 26, 1814, §9. Modification of rules regarding pleadings in appeals. The respondent may file an answer to the reasons of appeal or not at his option. Proviso.

No further pleadings beyond the answer to be admitted with certain exceptions.

R. 5, 1793, §18. extended to Benares by R. 9, 1795; and re-enacted for ceded provinces in R. 4, 1803, § 18. Authority of the provincial courts in cases which may appear not to have been sufficiently investigated. Regulations above cited, and R. 13, 1808, § 8.

<sup>1</sup> In referring a suit back to a zillah or city court for further investigation, the provincial court may either direct the judge, after taking the further evidence required, to transmit it to the provincial court for their decision thereupon; as is usually done, for the purpose of expediting a final decision upon the case, when a judgment upon the merits may have been given in the original court; and some particular point only remains to be further investigated: or may instruct the zillah or city judge to pass a second decision upon the further evidence to be taken by him, subject to a second appeal to the provincial court; as authorized by the regulations, whenever the suit may have been dismissed on the original trial upon the ground of some default, without investigation of the merits of the case. If the suit have been irregularly instituted in the zillah or city court, as in the case of a suit against Government, not instituted in the mode prescribed by Section 11, Regulation 3, 1793, and consequently tried and determined without the communication to, and order from, the Governor General in Council, required by that section; the provincial court (as well as the sudder dewanny

Further evidence how to be taken, if received in the provincial court.

R. 13, 1808, §9. In what cases a provincial court may cause the evidence of a witness to be taken by the judge of the zillah, or city, in which the witness resides. In what manner to be taken.

Modification of above rule in R. 26, 1814, § 11.

Interrogatories to be sent by provincial court, in sudder dewanny adawlut; when they direct witnesses to be examined by a zillah or city judge.

But discretion in this respect

themselves, they are authorized, either themselves to examine the witnesses produced, *viva voce*, in open court; or to direct their register, assistants, or principal native officers, to take the depositions of the witnesses, in the presence of the appellant and respondent, or their vakeels; who are to be at liberty to put any questions they may think proper; and the examination, including such questions and the answers to them, is to be reduced into writing, signed by the deponents, and authenticated by the register, assistant, or native officer employed to take the examination. "Whenever a witness, whose evidence is required by a provincial court, may reside at such a distance from the station of the provincial court, as to render his attendance at such station inconvenient; or when, from any cause, it may be deemed improper by the provincial court to summon a witness to that court; it is competent to the provincial court to cause the deposition of such witness to be taken by the judge of the zillah or city in which the witness may reside. In such cases the provincial courts are to instruct the zillah or city judge upon what points the witness is to be examined; and the deposition is to be taken, in open court, in the presence of the parties, or their authorized pleaders, under the general rules prescribed for the examination of witnesses in the civil courts." In modification of this rule it was prescribed in Section 11, Regulation 26, 1814, that whenever from any cause it may be deemed improper to summon a witness to attend the sudder dewanny adawlut, or the provincial court, instead of merely instructing the zillah and city judge upon what points the witness is to be examined, the court "shall prepare and transmit to the zillah or city judge distinct written interrogatories to be put to each witness; such interrogatories shall be prepared and signed by the parties or their vakeels, under the direction of the court, and shall be countersigned by the judge of the court, who may order the examination. The zillah or city judge, to whom such interrogatories may be sent, shall in the first instance cause the depositions of the witnesses to be taken in answer to the interrogatories; and shall then allow the parties, or their pleaders, in whose presence the witnesses may be examined under Section 9, Regulation 13, 1808, to put any other questions which may appear relevant to the points at issue in the case." But this rule having been found productive of delay

adawlut in similar cases) may nonsuit the plaintiff, on the ground of such irregularity; and direct him to prefer his claim *de novo* in the manner prescribed by the regulations. But if the suit have been regularly preferred in the zillah or city court, the provincial courts are not authorized, upon an appeal from the original decision, or the sudder dewanny adawlut upon an appeal from the judgment of the provincial court, to direct that the plaintiff's claim be instituted *de novo*. This was determined by the court of sudder dewanny adawlut in the case of Hurlpurshad Dabee, versus Birjashemul, on the 7th September, 1796. It may be useful to add, that, in the case of Rajah Mahanund appellant against Gholam Sufdur, the former contested the authority upon which the latter commenced an action against him in the court of zillah Moorshedabad; and having appealed to the provincial court against an order of the zillah judge for admitting such authority, the sudder dewanny adawlut, upon a reference from the provincial court whether such interlocutory appeal were admissible, determined, on the 1st March, 1798, that it should be admitted. The court, at the same time, expressed their concurrence in opinion with the provincial court, that "it is not, in general, necessary or proper to interfere with the processes of the zillah courts, respecting depending suits;" but remarked that "in particular cases, such as the present, wherein the defendant objects to the authority of the plaintiff to institute the suit against him, and when an appeal may be preferred against the decision passed in the zillah court upon such preliminary objection, an immediate and final decision thereupon, by the courts of appeal, is obviously desirable for all the parties concerned; and appears to the court consistent with the meaning and intention of the regulations, as conducive to the ends of justice."

and inconvenience, when several witnesses are to be examined on a point or points, not before investigated; a discretion is vested in the court of sudder dewanny adawlut, and the provincial courts, by Section 11, Regulation 19, 1817, "to dispense with a strict observance of the rule abovementioned in particular cases, when it may appear advisable." It is at the same time provided, that "in such cases the zillah or city judge, by whom the witnesses are to be examined, shall be furnished with specific instructions respecting the point or points, upon which their evidence is to be taken; and the depositions of the witnesses shall, if practicable, be taken by the judge himself, or by his register, instead of being left to a native officer, as authorized in cases of necessity by Section 11, Regulation 24, 1814." The provincial courts are further empowered (by Section 10, Regulation 13, 1808,) when they may judge it advisable "to cause the evidence of any witness to be taken in the prescribed form before the judge of the provincial court, who shall next proceed upon the circuit to the zillah in which the witness may reside."

In dispensing with the oaths of particular witnesses, or examining them by commission; as well as in proceeding against any witness who may refuse to be sworn, or to give evidence, or to subscribe his deposition; or who may be guilty of wilful and corrupt perjury; and generally in all cases provided for by the rules before stated for the zillah and city courts respecting the attendance and examination of witnesses in those courts, the same rules are applicable to the provincial courts. The stated penalties, for resistance to any process of the zillah or city courts, are also extended to all similar resistance of any process, rule, order, or decree, which may be issued from a provincial court. The only further special provision relative to appeals to the provincial courts, which it appears requisite to notice, is that, if the appeal be preferred against a decision founded upon an award of arbitration, it is to be dismissed with costs, unless it be fully proved, by the oaths of two credible witnesses, that the arbitrators have been guilty of gross corruption or partiality in the cause. It is however necessary to observe upon the rule contained in Section 21, Regulation 51, 1793;<sup>1</sup> (and Section 21, Regulation 4, 1803, for the ceded provinces,) whereby the provincial courts are authorized to dismiss an appeal which the appellant may not proceed in for six weeks, unless he shall show reasonable cause for not proceeding in it; that the option which the plaintiffs in the zillah and city courts have, in cases of nonsuit, to institute a new suit, does not extend to appeals dismissed for non-prosecution or other default; which may indeed be revived, upon sufficient cause shown to the satisfaction of a superior court of appeal; but cannot be renewed by a second appeal in the same cause. The explanation given by the sudder dewanny

vested in sudder dewanny adawlut, and provincial courts, by R. 19, 1817, § 11.

R. 13, 1806, § 10. Provincial courts further empowered to cause evidence of witnesses to be taken by judges of circuit.

R. 5, 1793, § 19, 20; extended to Benares by R. 9, 1795; and re-enacted for ceded provinces in R. 4, 1803, § 19, 20. In dispensing with oaths, and other proceedings respecting witnesses, the rules stated for the zillah and city courts are applicable to the provincial courts.

R. 5, 1793, § 23, 26. R. 4, 1803, § 23, 26. Penalties for resisting process of provincial courts, the same as for resistance to process of the zillah and city courts.

R. 5, 1793, § 28, R. 4, 1803, § 28. In cases of arbitration, appeal to be dismissed, with costs, unless the corruption or partiality of the arbitrators be proved. R. 5, 1793, § 21, R. 4, 1803, § 21. Remark upon power vested in the provincial courts to dismiss appeals not proceeded in for six weeks.

<sup>1</sup> The following explanation of this rule was communicated to the provincial courts, by order of the sudder dewanny adawlut, in a circular letter from the register of that court, dated 5th November, 1812:—"The court consider the intent and meaning of the said provision to be, that if an appellant shall neglect, for the term of six weeks, to perform any act required from him in the regular prosecution of the appeal, his appeal is to be dismissed: but that before the judgment of dismissal be passed against him, he is to be called upon to show cause for not having proceeded in the appeal; and that such cause, if it be established, and be good and sufficient in itself, is to be admitted to save the dismissal." It is added, "In case an appellant, who may have omitted to proceed in his appeal for six weeks, shall not be in attendance in your court, either in person or by vakeel, you will call upon him to attend, and show cause as above explained, by the process prescribed in Sections 5 and 11, Regulation 4, 1793, (extended to Benares by Section 2, Regulation 8, 1795; and re-enacted for the ceded provinces by Sections 5 and 13, Regulation 3, 1803;) for summoning defendants; and upon due proof of the service of such process, will, on the failure of the appellant to attend, dismiss his appeal."

adawlut to the zillah and city courts, (that before the judgment of nonsuit be passed, against a party neglecting for six weeks to perform any act required from him in the prosecution of the suit, he should be called upon to show cause for not having proceeded in it) is therefore not only equally applicable to the nonsuit of appellants, for neglect in the prosecution of their appeals; but demands the most strict observance, to obviate the injurious consequences that must ensue, if the party should not, by wilful neglect, have justly subjected himself to the penal dismissal of his appeal with costs.<sup>1</sup>

R. 3, 1793, § 19,  
R. 5, 1793, § 9,  
R. 3, 1803, § 19,  
R. 5, 1803, § 9,  
Prohibition of  
correspondence,  
by letter, between  
provincial, zillah,  
and city  
courts, relative to depend-  
ing causes or other judicial  
matters, and mode of communication  
to be observed by them respectively.

R. 5, 1793, § 15;  
re-enacted for  
ceded provinces  
in R. 4,  
1803, § 15.  
Process to parties  
and witnesses, and  
all judicial  
orders of provincial  
courts, in what language  
to be written, or  
printed.  
And in what  
manner to be  
issued, served,  
and executed.  
Report to be  
made to, and  
power of suspension  
vested in, court of  
sudder dewanny  
adawlut, in cases of disobedience,  
neglect, or false  
return, by any  
zillah or city  
court.

It has already been remarked<sup>2</sup> that the provincial courts, in common with the zillah and city courts, are prohibited from corresponding by letter with the parties in any suits, or matters, within their cognizance. They are also prohibited from corresponding by letter with each other, respecting any depending cause, or upon any matters on which they may not be specially empowered to correspond. When a zillah or city judge shall have occasion to communicate to a provincial court any information that may be required from him by the court; or which he may deem it necessary to submit respecting any cause or matter that may be before it; he is to certify it to the court by a writing under his official seal and signature. When a provincial court shall have occasion to issue an order to the judge of any zillah or city court, or to require information from him on the subject of any suit or matter before them, they are to issue a precept under the seal of the court, and the signature of their register, commanding him to execute the order, or requiring him to furnish the information, and the judge to whom the precept may be directed, is to perform the exigence of it, or return good and sufficient reason why he has not done it. All process to parties and witnesses, and every rule or order whatever, which may be issued by the provincial courts, respecting cases depending before them, or the execution of decrees passed by them, is to be written or printed in the Persian and Bengal languages, in Bengal and Orissa; or in the Persian and Hindoostanee languages in the other provinces; to be sealed with the seal of the court; and signed by the register: all such process, rules, and orders, to be served or executed on any parties, witnesses, or other persons, not being in actual attendance on the provincial court, are to be directed to the judge of the zillah or city court, in which the cause may have originated; or in whose jurisdiction the disputed lands may be situated; or the parties may reside. Every process, rule, and order is to limit a certain time in which it is to be served, executed, and returned to the provincial court. If the judge of a zillah or city court to whom any process, rule, or order, may be directed, shall wilfully disobey, or neglect to perform, the commands contained in it; or shall make a false return; the provincial courts are enjoined to make an immediate report of such disobedience, neglect, or false return, to the sudder dewanny adawlut; which court is authorized to suspend the judge, so offending, from his office; and is required to notify the

<sup>1</sup> Appeals are frequently withdrawn, and the investigation of them discontinued, upon a compromise between the parties; who deliver to the court, in such cases, deeds of agreement and acquittance denominated *Rāzeenāmah*, and *Sāfeenāmah*. An application to revive an appeal so discontinued, on the ground of the conditions, upon which the *Rāzeenāmah* had been granted by the appellant, not having been fulfilled by the respondent, was refused by the sudder dewanny adawlut, in the appeal of GUDADHUR MITR, versus MOORLEEDHUR MITR, on the 14th December, 1796; as in this case, the appellant might have a new action against the respondent. But to save the expense and delay of a new suit; as well as to encourage the amicable adjustments of parties; whenever the deeds of agreement, on which an appeal may be withdrawn, specify distinctly the terms of compromise, it may be just and expedient to enforce them, as in execution of a decree of court.

<sup>2</sup> In page 45.

suspension, with all relative proceedings, and papers, within ten days, for the determination of the Governor General in Council.' The rules which are now in force for the conduct of inquiries into charges of corruption, and other complaints of a serious nature, when preferred against the zillah or city judges, or other European officers employed in the judicial department, will be stated in the sequel. But it may be noticed in this place, that, in cases not expressly provided for by any regulation, "in which it shall appear to the provincial courts, that the judges of the zillah or city courts have been guilty of negligence or misconduct in the discharge of their duty, they are to report the circumstances to the sudder dewanny adawlut." The object of these provisions, whereby the provincial courts are restricted from the exercise of any personal authority over the judges of the zillah and city courts, is to maintain the high respect due, in every station, to the judicial office and character; whilst, at the same time, a strict observance of the regulations is provided for by the power vested in the courts of appeal; and the subordination, indispensably requisite in every department of the public service, is preserved for the courts of justice in general, by the authority delegated to the sudder dewanny adawlut; and the superintending control of His Excellency the Governor General in Council. It remains only to add, under the present head, that the provincial courts are specially empowered "to try and determine in the first instance, any suit or complaint, or any matter whatever

The rules in force for inquiring into charges of corruption, or other serious complaints against the zillah or city judges, will be stated in the sequel.  
R. 5, 1793, § 10. re-enacted for ceded provinces in R. 4, 1803, § 10. Provincial courts how to proceed in other cases, when the zillah and city judges may appear guilty of negligence or misconduct. R. 5, 1793, § 6 and 7; R. 2, 1798, § 5 and 6; re-enacted for ceded provinces in R. 4, 1803, § 6, 7, 8.

<sup>1</sup> A question having arisen as to the language, in which precepts should be issued by the courts of appeal to the judges of the zillah and city courts, it was explained and directed by a circular order from the sudder dewanny adawlut, under date the 12th October, 1803, that all process to parties and witnesses, as well as all decrees and orders of court, respecting causes or other judicial matters, which, according to the regulations, must be written in the languages of the country, are to be enclosed in an English precept from the provincial court; and that the zillah and city judges, when they have any information to certify to the provincial courts, or to the sudder dewanny adawlut, or any return to make to them, relative to causes, or any matter of judicial cognizance, are to transmit an English certificate, or return, with a copy of their Persian proceedings, containing the information to be certified, or the particulars of what may have been done in execution of orders. This rule of practice had before been adopted by the sudder dewanny adawlut in its communications to the provincial courts; and was directed, on the 20th April, 1801, to be observed by the latter in any certificates or returns they might have occasion to transmit to that court. The provincial, zillah, and city courts were further instructed, on the 12th October, 1803, to observe the same mode of communication in any applications they may have to make to each other, or to the collectors, or other European officers of Government, for papers, information, or any other purpose; in which cases copies of, or extracts from, their Persian proceedings, containing the substance of the application, are to be enclosed in a short English address, requesting compliance with the contents; or if it be a case in which the court is directed, or empowered, to issue an order and precept to any European officer of Government, the Persian copy of such order, or an extract from the proceedings containing it, is to be enclosed in an English precept, under the seal of the court, and signature of the judge or register, requiring performance of the order so transmitted within a limited time; or that sufficient cause be assigned within such period why the order is not put in execution. The object of these instructions is not only to maintain the respect due to the European officers of Government; which it is difficult to preserve in a Persian order, or application, directly addressed to them; but also to complete the record of every civil cause in the prescribed language, by having all orders, applications, and returns, recorded at length in the original proceedings, and documents of the cause. The provincial, zillah, and city courts were further informed by the sudder dewanny adawlut, on the 18th April, 1811, "that all discussions regarding the relative powers of European officers, or animadversions upon points of a general nature, not immediately connected with the trial and decision of any case, should, as far as possible, be kept distinct from the judicial proceeding; and, for obvious reasons, be conducted in the English language."



Special powers of provincial courts to try suits referred to them by government or the sudder dewanny adawlut.

To receive and order the trial of suits cognizable in the zillah and city courts, in certain cases. And to receive and direct the regular proceeding upon petitions respecting matters depending in the zillah and city courts.

Concluding observation on the utility and importance of the provincial courts of appeal.

of a civil nature, which may be transmitted to them for that purpose by the Governor General in Council ; or by the sudder dewanny adawlut :” also, “ to receive any original suit or complaint, which may be cognizable in any zillah or city court within their respective jurisdictions ; and to command the judge of such court to receive the suit, or complaint, and proceed to hear and determine it ; provided proof shall be previously made to their satisfaction, that the judge refused or omitted to receive or proceed in it ;” and lastly, “ to receive any petitions respecting suits or matters that may be depending, or have been decided, in any zillah or city court within their respective jurisdictions ; and provided it shall be proved to their satisfaction that the petition was presented, or that due means were used to effect its being presented, to the judge, and that he refused or omitted to receive it, and proceed on it ; or in the last mentioned case, that undue means were used by any of the officers of the court to prevent the petition being presented ; the provincial court are empowered to issue a precept, under the seal of the court and attested by the register, commanding the judge to receive the petition, and to proceed respecting it according to the regulations.”

The public utility and importance of the provincial courts, which have been thus established, for the supervision of the zillah and city civil courts ; and to receive appeals from their decisions, in every case wherein the suit may have been tried in the first instance by the zillah or city judge ; cannot require any lengthened comment, after what has been stated of the consequences arising from the want of local courts of appeal, before these were constituted. It will be sufficient to quote the words of the illustrious personage by whom they were proposed.<sup>1</sup> “ These courts will be the great security to Government for the due execution of the regulations ; and barriers to the rights and property of the people. Their decisions will command respect ; and at the

<sup>1</sup> From the public minute of Marquis Cornwallis, recorded on the 11th February, 1793. The following extract from the same comprehensive record, (which is appealed to as forming the basis of the system established in 1793,) states precisely the degree of control intended to be exercised by the provincial courts over the judges of the zillah and city courts. “ From the very respectable footing on which the judicial officers are proposed to be placed, and the care which, it is to be presumed, will always be taken to select persons who are best qualified, by abilities and integrity, to fill them, I am persuaded that instances of corruption, or other misconduct, in any of the judges, will rarely occur. It is necessary however, upon general principles, that such cases should be provided against, and the following measures appear best calculated for the purpose. The provincial courts of appeal should be empowered to receive any charges that may be preferred to them against the judges of the zillah or city courts. But to prevent the characters of these judges being wantonly aspersed, rules should be laid down to deter people from making groundless accusations. The provincial courts should not be permitted to make any inquiries, in the first instance, into the charges that may be preferred against the zillah or city judges ; but should be directed to forward them to the sudder dewanny adawlut. This court should issue a special commission to the provincial courts to make such inquiries and to take such evidence respecting the charges as it may think advisable. The observance of this formality will be essential. It will not obstruct the bringing forward of well-founded complaints : at the same time it will operate to deter people from preferring groundless charges. To delegate to the provincial courts of appeal a power to inquire into such charges, without a previous reference to the sudder dewanny adawlut, would, in fact, be making the judges of the zillah and city courts personally subject to their authority. This would soon deprive the zillah and city judges of all weight and consequence in the eyes of the people ; and lessen that respect, with which it is necessary they should look up to their decisions. The judges of the provincial courts should possess no authority over the judges of the zillah and city courts personally. Their control over them should be only that of a superior court, empowered to revise their decrees, when regularly brought before them in appeal.”

same time that they will give security to property, and afford protection to the people, their weight and influence will contribute greatly to the vigor and stability of our internal government. A great part of the property of the country will be held under their decrees; and their decisions on cases, and the rights of individuals, will in many instances, in course of time, have the force of law."

*Court of Sudder Dewanny Adawlut.*

By Section 2, Regulation 6, 1793, the court of sudder dewanny adawlut was made "to consist of the Governor General and the other members of the supreme council;" who also, under Section 67, Regulation 9, 1793, constituted the court of nizamat adawlut, or principal court of criminal judicature, "assisted by the head cauzy, and two muftees." But, in the words of the preamble to Regulation 2, 1801, "by reason of the various public duties of the Governor General, and of the members of the supreme council, unavoidable delays had arisen in the proceedings of the said courts." It was at the same time considered "essentially necessary to the impartial, prompt, and efficient administration of justice, and to the permanent security of the persons and properties, of the native inhabitants, that the Governor General in Council, exercising the supreme legislative and executive authority of the state, should administer the judicial functions of the Government by the means of courts of justice, distinct from the legislative and executive authority of the state;" and that "further provision should be made for the more effectual dispatch of the proceedings of the said courts of sudder dewanny adawlut and nizamat adawlut." Section 2, Regulation 6, 1793, and Section 67, Regulation 9, 1793, were therefore repealed by Section 2, Regulation 2, 1801, and the following provisions were enacted in the four succeeding sections of that regulation.<sup>1</sup>

§ 3. "The court of sudder dewanny adawlut shall henceforth consist of three judges, to be denominated respectively, chief judge, and second, and third judge, of the sudder dewanny adawlut. The said chief judge shall not be the Governor General, nor the Commander in Chief; but shall be one of the members of the supreme council, to be selected and appointed by the Governor General in Council; and the said second and third judges shall be selected and appointed by the Governor General in Council, from among the covenanted civil servants of the company, not being members of the supreme council." § 4. "The chief judge, and each of the puisne judges, who may be appointed to the court of sudder dewanny adawlut, previous to entering upon the execution of the duties of his office, shall take and subscribe before the Governor General in Council, the same oath, as is required to be taken and subscribed by the judges of the provincial courts of appeal, according to the form prescribed in Section 2, Regulation 5, 1793." § 5. "The court of sudder dewanny adawlut constituted by Section 3, of this regulation, shall possess all the powers vested under the existing regulations in the court of sudder dewanny adawlut, which was constituted by Section 2, Regulation 6, 1793; and shall perform all the duties required to be performed by that court under Regulation 6, 1793, and under all other regulations which have been passed and published in the mode prescribed by Regulation 41, 1793; subject to all the modifications and provisions contained in such regulations;

Constitution of sudder dewanny adawlut under R. 6, 1793, § 2. And of nizamat adawlut under R. 9, 1793, § 67. Necessity for altering the constitution of both courts, stated in preamble to R. 2, 1801.

Sections above mentioned repealed by R. 2, 1801, § 2. And provisions enacted in succeeding sections of that regulation.

Section 3. Sudder dewanny adawlut to consist of a member of the supreme council as chief judge, and two puisne judges to be selected from among the covenanted civil servants, not members of Council.

Section 4. The judges to take an oath similar to that prescribed for judges of the provincial courts of appeal.

Section 5. The court shall possess all the powers and perform all the duties described in former regulations, under the following provisions.

<sup>1</sup> Similar provisions relative to the constitution and powers of the court of nizamat adawlut were, at the same time, enacted in Sections 10, 11, 12, and 13, of Regulation 2, 1801; as will be more fully stated under the head of *Court of nizamat adawlut*.

Section 6.  
To be an open court, and to be held by not less than two judges, and no decree or final order to be valid, unless passed by two judges at least. Rules in cases of difference of opinion between the judges present.

Ordinary sittings to be thrice in a week, and special sittings, when necessary, how to be summoned.

Powers vested in the senior judge present in the absence of the chief judge.

The chief judge, or any other judge duly empowered, may receive petitions, and proceed thereon, but not to pass any final decree or order. Any judge may take depositions instead of causing them to be taken by the register.

Court to regulate the mode and order of their own proceedings under the rules prescribed in the regulations.

Decrees to be signed by the judges present, and all process by the register.

Regulation 10, 1805, enacted for more complete attainment of the objects stated in preamble to Regulation 2, 1801.

Preamble to Regulation 10, 1805.

and to the following further provisions." § 6. "The court of sudder dewanny adawlut is to be an open court, and to be holden as directed in Section 3, Regulation 6; 1793, as soon as a convenient place shall have been provided for the purpose. Two judges shall be necessary to hold a court; and no decree or final order of the court shall be valid unless passed by two judges present. In the event of any difference of opinion arising when the three judges shall be present in court, the voices of the majority shall determine the question; but if a difference of opinion should arise when two judges only shall be present in court, the question then before the court shall be postponed for adjudication, until the third judge shall attend. The judge, who may be absent when any such case shall occur, shall be duly advised of the same, by the register to the court; and the chief judge shall instruct the register to summon a special sitting of the court, for the adjudication of the question; or the chief judge shall order the said question to be brought forward for adjudication, at the next ensuing ordinary sitting of the court, when all the said judges shall be present. The ordinary sittings of the court shall be holden on three fixed days in each week: and special sittings, when necessary, shall be summoned by the register, on his receiving orders for that purpose from the chief judge; or (during the absence or indisposition of the chief judge) from the senior judge at the presidency: who is hereby declared to be vested with the same powers as are vested in the chief judge, whenever the chief judge may quit the presidency; or, from indisposition or other cause, may be unable to attend the court; and also whenever the chief judge shall desire the senior judge present to officiate for him. It shall further be competent to the chief judge, or to any judge of the court, to whom this duty may be delegated by the court at large, to receive petitions of appeal, or any other petitions receivable by the sudder dewanny adawlut, and to proceed thereupon as the regulations authorize, and direct; so that all such petitions be received in open court; and that no decision or final order be passed thereupon, otherwise than in the presence of two judges; nor any order which may be repugnant to a previous decree or order of the court. Any one or more of the judges of the sudder dewanny adawlut may also take the depositions of witnesses in open court; instead of causing the same to be taken by the register, as authorized by Regulation 6, 1793; in cases where this mode of examination may be judged advisable; and, generally, the judges of the sudder dewanny adawlut are authorized to regulate the mode and order of their own proceedings; as well as the execution of their process; subject to the rules prescribed by the regulations. Every decree shall be signed by the judges present at the passing of such decree; and all process issued from the court shall be signed by the register, under such instructions as may be prescribed by the court for his guidance, in conformity to Section 5, Regulation 13, 1793; which empowers the judges of the several courts of justice, civil and criminal, to assign to all ministerial officers, attached to these courts, the duties to be performed by them respectively."

For the more complete attainment of the objects stated in the preamble to Regulation 2, 1801, above-cited; as well as in consideration of the extended jurisdiction of the courts of sudder dewanny and nizamat adawlut over the ceded and conquered provinces, and the consequent augmentation of business, which required more frequent sittings than could be held by two judges, the presence of both of whom was indispensable to form a competent court; Regulation 10, 1805, was enacted, "for amending the constitution of the courts of sudder dewanny adawlut and nizamat adawlut, as far as relates to the appointment of the chief judge of those courts," in the following terms:—

"Whereas with the view of providing for the more expeditious and effectual administration of justice in the courts of sudder dewanny adawlut and

nizamut adawlut, it was enacted by Regulation 2, 1801, that the Governor General and the members of the supreme council should be divested of the judicial powers formerly exercised by them as judges of those courts, and that the administration of justice in the said courts should be committed to three judges, and that the chief judge only should be a member of the supreme council, and that the other two judges should be civil servants of the Company not being members of the supreme council : and whereas the exercise of the functions of chief judge of the said courts by a member of the supreme council is not only liable in a great degree to the objections which exist to the exercise of the functions of judges of those courts by the Governor General, and the members of the supreme council collectively, but is moreover exceptionable on grounds connected with the nature of the relations subsisting between such chief judge, as a member of the supreme executive branch of the Government, and the Governor General, and the other members of that branch of the Government : and whereas the various important and laborious duties of the members of the supreme government render it impracticable for any member of that government to discharge the extensive and arduous duties of chief judge of the said courts : and whereas it is essential for the purpose of giving full effect to the provisions made by the constitution established for the internal government of the British territories subject to the immediate government of this presidency by the regulations passed on the 1st of May, 1793, for ensuring to the people the permanent enjoyment of the inestimable blessing of just laws duly administered, that the separation of the judicial authority from the executive authority in all their respective branches and gradations (which formed a fundamental principle of that constitution,) should be carried into full and complete execution both in form and in practice ; the Governor General<sup>1</sup> in Council has enacted the following rule, to be in force from the date of this regulation.” § 2. “Such parts of Sections 3, and 10, Regulation 2, 1801, as direct that the chief judge of the court of sudder dewanny adawlut, and the court of nizamut adawlut, shall be a member of the supreme council, to be selected by the Governor General in Council, is hereby rescinded, and the chief judge of the said courts shall be selected by the Governor General in Council from among the civil covenanted servants of the Company not being members of the supreme council.”

In consequence of instructions from the Honorable Court of Directors, founded on a principle of economy, and a supposition that one of the members of the supreme council might be able to officiate as chief judge of the courts of sudder dewanny and nizamut adawlut, the rule above cited was rescinded by Section 2, Regulation 15, 1807, with a provision, in Section 3, of that Regulation, that these courts should “in future consist of a chief judge, being a member of the supreme council, but not the Governor General, nor the commander in chief ; and of three puisne judges, to be selected from among the Company’s covenanted servants. But the increased business, civil and criminal, of the two courts, rendering it indispensably necessary that the number of judges should be augmented, Section 3, Regulation 15, 1807, was rescinded by the first clause of Section 2, Regulation 12, 1811 ; and the following provision, which is still in force, was enacted in the second clause of

Section 2.  
The chief judge of the courts of sudder dewanny adawlut and nizamut adawlut to be selected from among the civil covenanted servants of the Company not being members of the supreme council. The above section rescinded by R. 15, 1807, § 3.

Final provision made in R. 12, 1811, § 2.

<sup>1</sup> Marquis Wellesley was at this time Governor General ; and by the entire separation of the judicial authority, from the executive Government, which this regulation provided for, may be stated to have put the key-stone to the fabric of policy and justice, sometimes denominated the judicial system, but more properly designated the system of internal administration for British India, the foundations of which were laid by Marquis Cornwallis.

R. 25, 1814, §4.  
What persons  
competent to  
hold the office  
of judge of the  
sudder dewanny  
and nizamut  
adawlut.

that section. "The courts of sudder dewanny adawlut and nizamut adawlut shall, in future, consist of a chief judge, and of as many puisne judges as the Governor General in Council may, from time to time, deem necessary for the dispatch of the business of those courts." The only further provision to be noticed, relative to the judges of the two courts abovementioned, is that contained in Section 4, Regulation 25, 1814, viz. that "From and after the 1st of February, 1815, no person shall be deemed qualified to be appointed to the office of a judge of the sudder dewanny or nizamut adawlut, unless he shall have previously officiated as judge of a provincial court of appeal, or of a court of circuit, for a period not being less than three years; or unless he shall have been previously employed in the judicial department, or in offices requiring the discharge of judicial functions, whether of a criminal or civil nature, for a total period not being less than nine years."

R. 25, 1814, §5.  
Present jurisdiction  
of the court of sudder  
dewanny  
adawlut.

Section 5, of the same regulation, defines the present jurisdiction of the court of sudder dewanny adawlut, (which was limited by Regulation 6, 1793, to the cognizance of appeals from the decisions of the provincial courts, for an amount or value, exceeding one thousand sicca rupees; and restricted by Regulation 12, 1797, and 5, 1798, to cases in which the decrees of the provincial courts might be for more than five thousand rupees,) as follows—

May direct the  
transfer of  
suits, exceeding  
50,000  
current rupees,  
from the  
provincial  
courts, to the  
sudder dewanny  
adawlut.

"First. All original regular suits in which the value or amount of the claim, calculated according to the provisions of Section 14, Regulation 1, 1814, may exceed five thousand sicca rupees, shall be instituted and tried as heretofore in the provincial courts; but if it shall at any time appear to the sudder dewanny adawlut, that from the pressure of business in any of the provincial courts, suits amounting to fifty thousand current rupees (or 43,103 sicca rupees) being the amount fixed for appeals to the King in Council, can be more conveniently or expeditiously tried in the first instance, by the sudder dewanny adawlut, than by the provincial court before whom they may be

<sup>1</sup> Under the regulation last cited, the author of this Analysis was appointed chief judge of the courts of sudder dewanny and nizamut adawlut on the 17th December, 1811; and a letter, from which the following is an extract, was at the same time written by the secretary of Government to the register of the two courts:—"Under the present constitution of the courts of sudder dewanny adawlut and nizamut adawlut, the permanent establishment of those courts consists of a chief judge, being likewise a member of the supreme council, and of three puisne judges. On a general and mature consideration of the subject, the Right Honorable the Governor General in Council has been pleased to resolve, that the permanent establishment of the court shall from the present period consist of a chief judge, to be chosen from among the covenanted servants of the Company, but who may not be a member of the supreme council, and of two puisne judges, to be likewise of course chosen from among the covenanted servants of the Company. The arrangement is, of course, founded on the impracticability of reconciling, in the present extended state of the business of this country, the important and arduous duties of a member of the supreme council, with the laborious functions of a member of a court of justice; and on the acknowledged expediency of effecting a complete separation of the judicial power, from the legislative and executive authorities of the state. But after the discussion which this subject has received on former occasions, it appears unnecessary to enlarge upon it in this place." It may be added, that to prevent an accumulation of business in the two principal courts of judicature, civil and criminal, it has since been found necessary to appoint four permanent judges; and to give the temporary assistance of a fifth officiating judge; with a view to the adoption of an arrangement, which was sanctioned by Government, in the year 1816, for the speedy determination of an arrears of civil causes and criminal trials then depending; and which proved successful, especially in the decision of criminal cases; insomuch that on the 8th January, 1817, (as appears by a report from the nizamut adawlut to Government on that date) "not a single criminal trial was depending before the court."

depending, it shall be competent to the sudder dewanny adawlut to order the transfer of all or any of such suits from the provincial courts to the sudder dewanny adawlut. In the transfer and trial of such suits the sudder dewanny adawlut shall be guided by the same provisions as are prescribed for the conduct of the provincial courts, regarding the transfer and trial of original suits exceeding five thousand rupees in value, depending in the zillah and city courts. *Second.* An appeal shall lie to the sudder dewanny adawlut from the judgments passed by the provincial courts, in all regular civil suits, which may be tried and determined in the first instance, by those courts, under the rules heretofore in force, or in conformity with Section 3, of this regulation. *Third.* The sudder dewanny adawlut is further empowered to admit a second or special appeal from the judgments passed by provincial courts, on regular appeals admitted by them, from original decisions of zillah and city judges and assistant judges, or from the original decisions of registers passed under the provisions of Clause Sixth, Section 9, Regulation 24, 1814. *Fourth.* In receiving and trying such special appeals, the sudder dewanny adawlut is to be guided by the rules contained in Section 2, Regulation 26, 1814. *Fifth.* Nothing contained in this regulation shall be construed to preclude the sudder dewanny adawlut from authorizing the several courts of civil judicature to revise their own judgments, or to preclude the sudder dewanny adawlut from admitting a summary appeal under the provisions contained in Section 3, Regulation 26, 1814."

The court of sudder dewanny adawlut are further empowered to receive any original suit or complaint, which may be cognizable in any zillah or city court; or any appeal from the decision of a zillah or city court, which may be cognizable in any provincial court of appeal; and provided proof be made to their satisfaction, that the zillah or city judge refused or omitted to receive, or proceed in, such original suit or complaint; that the complainant applied to the provincial court of the division; and that such court omitted or refused to command the judge to receive or proceed in it; or in the case of an appeal, that the provincial court omitted or refused to receive or proceed in it; may command the zillah or city judge to receive such original suit or complaint, and proceed to hear and determine it; or may command the provincial court to receive, hear, and determine the appeal. The court are also vested with authority to receive any petitions respecting suits or matters, which may be depending or have been decided, in any zillah or city court; as well as any petitions respecting appeals or matters that may be depending, or have been decided, in any provincial court of appeal; and provided it be proved to their satisfaction, that the petition, if relative to any matter depending before, or decided by, a zillah or city court, was presented to the judge of such court; and that he refused or omitted to receive and proceed on it; and that the complainant applied to the provincial court of the division; and such court omitted or refused to grant a precept to the zillah or city judge, as directed in such cases by the regulations; or, if the petition relate to a matter depending before, or decided by, a provincial court, that it was presented to such court; and that they refused or omitted to receive and proceed upon it; may issue a precept, under the seal of the court and attested by the register, commanding the zillah or city judge, or the provincial court of appeal, (as the case may relate to either) to receive the petition; and to proceed respecting it according to the regulations.

The foregoing provisions have in view to ensure the receipt of all suits, appeals, and petitions of whatever nature, relative to matters cognizable by the established courts of civil justice; and the regular proceeding of the proper courts thereupon, in such manner as the regulations prescribe. But as the civil courts are not authorized to revise their own proceedings, after judgment has

An appeal lies to the sudder dewanny adawlut in all suits tried in the first instance by the provincial courts.

In what cases a special appeal may be admitted by the sudder dewanny adawlut.

How such special appeals shall be received and tried.

Provisions for reviews and summary appeals.

R. 6, 1793, § 4 and 5.

R. 2, 1798, § 5, 7, 8, re-enacted for ceded provinces in R. 5, 1803, § 4, 5.

In what cases the sudder dewanny adawlut may receive original suits cognizable by the zillah and city courts, or appeals cognizable by the provincial courts, and how to proceed thereupon.

In what cases the court may also receive petitions respecting matters depending before, or decided by the provincial, zillah, or city courts; and how to proceed thereon.

Object of foregoing provisions, to secure a regular proceeding on all matters cognizable by the civil courts.

Further provision to obtain, with sanction of the sudder dewanny adawlut, a revision of judgments of the civil courts in certain cases.

Reasons for lodging this power with the sudder dewanny adawlut only.

R. 2, 1799, § 2, 3.

R. 2, 1803, § 22.

R. 4, 1803, § 30.

R. 5, 1803, § 37.

Rules for granting a review, in cases not appealable, extended by R. 3, 1813, to appealable cases.

Rescinded by first clause of Section 4.

R. 26, 1814; Rules now in force, under Second, Third, and Fourth Clauses of that Section.

Provisions regarding the mode of applying for permission to review judgments from which no appeal shall have been preferred.

Provision for empowering the sudder dewanny adawlut to grant a review.

been passed by them; and although the exercise of an unqualified power of revision, in decided cases, would tend to depreciate the value of property held under the decrees of the courts of judicature, the ends of justice may require in some cases, (especially when the judgment may not be open to appeal,) that the proceedings held should be revised for the purpose of correcting incidental errors, not affecting the principle of the decision; or for amending a judgment appearing to be erroneous, either on the face of the decree, or from the discovery of new matter or evidence; which could not be had, or used, at the time the decree was passed; it was necessary to provide for an occasional review of the proceedings held, and decisions passed, in such cases. At the same time, that the grounds for allowing a revision, in all instances appearing to call for it, might be uniform; as well as that it might not be granted, in any instance, without due deliberation and circumspection; it was judged expedient to lodge the exclusive power of authorizing a review in adjudged cases, with the court of sudder dewanny adawlut; and previous to the enactment of Regulation 3, 1813, *for authorizing a review in civil cases appealable*; viz. in the rules prescribed by Sections 2 and 3 of Regulation 2, 1798; Section 22, of Regulation 2, 1803; Section 30, of Regulation 4, 1803; and Section 37, of Regulation 5, 1803; the discretion vested in the court of sudder dewanny adawlut for granting a review, in decided cases, was confined to such as were not open to appeal. The whole of the Sections abovementioned, together with Regulation 3, 1813, are, however, rescinded by the first clause of Section 4, Regulation 26, 1814; and the following rules, now in force, are substituted in the succeeding clauses of that Section.—

“*Second.* Any persons considering themselves aggrieved by a decree passed in a regular civil suit, or appeal by a zillah, city, or provincial court, from which decree no further appeal may have been admitted by a superior court, and who, from the discovery of new matter or evidence which was not within their knowledge, or could not be adduced by them at the time when the decree was passed, or from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed against them, are at liberty to present a petition for this purpose to the court, in which the decree in question may have been passed; such petition shall be written on stamp paper of the value prescribed in Section 18, Regulation 1, 1814, and shall be presented within the period of three calendar months, from the delivery or tender of the decree, which period shall be calculated according to the provisions of Clause Eleventh, of Section 8, of this regulation. The courts are nevertheless authorized to admit applications for a review after the period abovementioned, provided that the parties preferring the same shall be able to show just and reasonable cause to the satisfaction of the court, for not having preferred such application within the limited period; in such case however the courts are enjoined to proceed with caution, and to state at large upon the proceedings, their reasons for admitting such applications after the limited period. If the courts shall be of opinion, that there are not any sufficient grounds for a review, they shall reject the petition, and their order to that effect, shall be final; but if on the contrary, they shall be of opinion, that the review desired is necessary to correct an evident error, or omission, or is otherwise requisite for the ends of justice, they shall report the same to the sudder dewanny adawlut, transmitting at the same time, a statement of the grounds of their opinion, with a copy of the petition presented to them, and a copy of the decree passed in the case. *Third.* The court of sudder dewanny adawlut, in cases referred to them under the preceding clause, as well as in all cases, in which a petition may be presented to them for a revision of their own judgments, which may not have been appealed to the King

in Council, (or though appealed, the proceedings in which may not have been transmitted to the King in Council,) are authorized to grant the review desired, if upon a consideration of the reasons stated, the circumstances of the case shall appear in justice to require it. The sudder dewanny adawlut shall record on their proceedings the grounds upon which a review may be granted by them in each instance, and shall issue any instructions regarding the admission or rejection of new evidence in the case, which they may deem just and proper. *Fourth.* The order of a zillah or city court, or of a provincial court, or of the sudder dewanny adawlut, rejecting the petition for a review in the first instance, or of the latter court refusing to sanction a review when applied for by a lower court, shall not be construed to preclude the party from instituting a regular appeal, (if the case be appealable) in a competent court, subject to the conditions and rules prescribed by the regulations in force for the admission of such appeals."

The orders rejecting applications for a review not to bar the right of a party to prefer a regular appeal.

In addition to the appeals which have been noticed, from the provincial courts established on the 1st May, 1793, the court of sudder dewanny adawlut were empowered, by Regulation 6, 1793, to hear and determine appeals from decisions passed by the provincial councils, or any members of a provincial council or committee, as a court of appeal, on or before the 6th April, 1781; or by the committee or board of revenue, between the 6th April, 1781, and the 1st May, 1793, either in suits tried and decided by them in the first instance, or in appeal from decisions of the collectors, or any other officers entrusted with the collection of the revenue. The court were also empowered, by Regulation 5, 1803, to hear and determine appeals from decisions passed by the board of commissioners, in the ceded provinces, before the institution of the Bareilly provincial court. In the cases abovementioned, as in all other cases wherein an appeal is authorized to the sudder dewanny adawlut, the court are declared at liberty to confirm or reverse, in whole or in part, the decrees appealed from; and "to make such further order on all such decrees, as justice, equity, and good conscience may require;" as well as to award to either party such costs as they may deem reasonable. But the court were directed to exercise with caution the power vested in them of admitting appeals from the decisions referred to, after the time limited for preferring them; lest all property held under such decisions should be deemed insecure, from being considered liable to be again contested. For the same reason, the provincial courts were enjoined, by Regulation 5, 1794, to exercise with caution the power vested in them of admitting appeals, after the limited period, from decrees of the mofussil dewanny adawluts, passed antecedently to the year 1793; and both the provincial courts and sudder dewanny adawlut were restricted by that regulation from the future admission of appeals against any judgments of the former courts of justice, which were final under the regulation in force at the time of their being passed.

In the trial of original suits and appeals, the court of sudder dewanny adawlut, in common with the provincial courts, are directed (except as to hearing witnesses and receiving evidence) "to proceed in the same manner, and with the like powers and authority, and subject to the same restrictions, limitations, and exceptions, as are prescribed to the zillah and city courts."

R. 6, 1793, § 9. Sudder dewanny adawlut empowered to admit appeals from decisions passed by the provincial councils, or by the committee or board of revenue.

R. 5, 1803. Also from decisions of commissioners in ceded provinces.

And to confirm, reverse, or alter, the decree appealed from.

But appeals to be admitted, with caution, after the time limited for preferring them.

R. 5, 1794.

Similar caution to provincial courts.

And restriction against appeals from final judgments passed by former courts.

R. 6, 1793, § 7. re-enacted for ceded provinces in R. 5, 1803, § 7.

By what rules the sudder adawlut

<sup>1</sup> This is expressly provided by Regulations 6, 1793, and 5, 1803. And it was declared by the court in a case decided on the 26th October, 1796, (Rajah Mohunmud Zuman Khan, versus Mr. Roger Gale,) that "the regulations for the administration of justice in the courts of dewanny adawlut, passed on the 5th July, 1781, and 27th June, 1787, having been equally obligatory on the court of sudder dewanny adawlut, as on the courts of mofussil dewanny adawlut, the former court was not authorized to grant any dispensation or exemption from the provisions of those regulations, either in



wanny adawlut to be limited in the trial of original suits and appeals.

R. 13, 1810, § 6. Modification of former regulations.

In what case a single judge of the sudder dewanny adawlut may hold a sitting. Proviso, when the single judge may be of opinion that a decision, or order, should be reversed, or altered. No judge to sit on an appeal from a judgment or order passed by himself.

Section 7. Decisions and orders of a single judge, in conformity with above section, to have the same effect, as those of the court at large.

Section 8. A single judge of the sudder dewanny adawlut may exercise the same powers, as the sitting judge of a provincial court.

And may determine on the admission or rejection of all applications for appeals; except in cases decided by himself.

It will therefore be sufficient, in addition to what has been stated, relative to the provincial, zillah, and city courts, and the appeals cognizable by the sudder dewanny adawlut, to specify the following provisions respecting the latter court.

By the first clause of Section 6, Regulation 13, 1810, such part of the regulations before in force as provided that two judges of the court of sudder dewanny adawlut, should be necessary to hold a court, and that no decree or final order of the court should be valid, unless passed by two judges present in court, was declared subject to the following modifications:—  
 “*Second.* Whenever, from the indisposition or absence, of one or more of the judges of the sudder dewanny adawlut, or from vacancy or any other unavoidable cause, the regular sittings of that court cannot be held before two or more judges of the court, it shall be competent to a single judge of the sudder dewanny adawlut to hold a sitting of that court, and to pass orders, or judgment, in conformity with the regulations, subject to the following provisions. *Third.* In the trial of appeals from decisions or orders of any provincial, zillah, or city court, if a single judge of the sudder dewanny adawlut, sitting upon the appeal, shall be of opinion, that the decision, or order, appealed against, ought to be reversed, or altered, he shall not pass any decree, or final order thereupon, until one or more of the other judges of the court can sit with him upon the appeal in question. *Fourth.* No judge of the sudder dewanny adawlut shall sit upon the trial of an appeal from a judgment or order, passed by himself.” § 7. “Decisions and orders of a single judge of the court of sudder dewanny adawlut passed in conformity with the foregoing section, shall have the same operation and effect, as decisions and orders passed by two or more judges of that court under the regulations in force.” § 8. “*First.* A single judge of the sudder dewanny adawlut, holding a sitting of that court, may perform the same duties, and exercise the same powers, as a single judge of a provincial court is authorized to perform and exercise, by Section 4, of this regulation, with the following modification of clause third. *Second.* The sitting judge may determine, on the admission or rejection, of all applications for appeals, whether regular or

their own court, or in any of the mofussil courts.” The stated mode of proceeding on appeals to the provincial courts, when preferred through the zillah and city courts, is also observable (*mutatis mutandis*) by the provincial courts, when appeals are preferred through them to the court of sudder dewanny adawlut. On the 27th April, 1796, the provincial courts were directed, in transmitting appeals to the sudder dewanny adawlut, to report whether the appellant has paid the institution fee, and given security for eventual costs, as required by the regulations. Also whether the decree appealed from has been carried into execution, or otherwise. On the 19th April, 1798, they were further instructed to transmit a copy of the decree to which the petition of appeal may relate; and if it do not clearly specify the produce, amount, or value, of the property adjudged, to add any information on this head which may have been recorded on their proceedings, or those of the zillah and city courts. The provincial courts were likewise directed to be careful to note the exact date on which the petition of appeal may be received by them; and if the appeal shall not have been regularly preferred within the prescribed period of three months, to require from the appellant a statement of the reasons for his delay; and transmit a copy thereof to the court of sudder dewanny adawlut with the petition of appeal. They were further required to transmit all petitions for appeals to the sudder dewanny adawlut, as soon after the receipt of them as may be practicable, consistently with due observance of the foregoing instructions. A provincial court having admitted an appeal to the sudder dewanny adawlut, which was preferred after the limited period, it was advised by the latter court, (on the 29th March, 1798,) that it had exceeded its authority in such admission; and the same principle is applicable to appeals to the provincial courts; which cannot be admitted by the zillah or city courts, unless regularly preferred within the time prescribed by the regulations.

special, to the court of sudder dewanny adawlut, except in cases, wherein the judgment, or order appealed from, may have been passed by himself. *Third.* Provided that it shall not, in any case, be competent to a single judge of the sudder dewanny adawlut to reverse, or alter, the decision or order, of two or more judges of the court."

"The sudder dewanny adawlut is empowered in cases of appeal, in which it shall appear to the court that the original suit has not been sufficiently investigated in the provincial court, or for any other cause that may be deemed reasonable by the court, either to receive such further evidence as they may think necessary for the just determination of the suit, and give judgment upon it; or to refer the suit back to the provincial court in which it originated, accompanied by such special directions to the provincial court, with regard to the new evidence they are to receive respecting it, as may be deemed by the court most conducive to justice, and the convenience of the parties and witnesses. But in every case in which the sudder dewanny adawlut may exercise the power above vested in them by this section, they are to enter upon the record of the trial their reasons for having exercised it." In cases in which the court may judge it proper to receive further evidence, they are empowered to proceed in like manner, as has been already stated, with respect to the provincial courts.

"All process to parties and witnesses, and every rule or order for the execution of a decree, or final order, and every other order" relative to any judicial matter or proceeding, which may issue from the sudder dewanny adawlut, is to be written or printed in the Persian and Bengal languages, for Bengal and Orissa; and in the Persian and Hindoostanee languages for the other provinces; to be sealed with the seal of the court; and signed by the register. All such process, rules, and orders, to be served or executed on any parties, witnesses, or other persons, not being in actual attendance on the court, are to be directed to the provincial court of the division; or if judged expedient, for expedition or any other purpose, to the judge of the zillah or city, in which the cause may have originated, or in whose jurisdiction the disputed lands may be situated, or the parties may reside. If any provincial, zillah, or city court, to whom any such process, rule, or order, may be directed, shall wilfully disobey, or neglect to perform, the commands contained in it, or make a false return, the judges, who may commit such offence, are liable to be suspended from their offices by the sudder dewanny adawlut; who are to notify the suspension to the Governor General in Council, within ten days after it shall take place; together with the cause of it; and to certify, under the seal of the court, the proceedings, depositions, exhibits, and all other relative papers, which may be necessary to enable the Governor General in Council to pass a determination upon the case. For resistance to any process, rule, order, or decree of the sudder dewanny adawlut, by any landholder, farmer, or other person, the same penalties are prescribed as have been already stated for resistance to the process of a provincial, zillah, or city court."

A single judge restricted from reversing, or altering, the decision, or order, of two or more judges. R. 6, 1793, § 16; re-enacted for ceded provinces, by R. 5, 1803, § 16. Cases in which the sudder dewanny adawlut is empowered to take new evidence in appeals, or to refer them back for further evidence to the provincial courts. How to proceed when they may receive further evidence.

R. 6, 1793, § 13; re-enacted for ceded provinces in R. 5, 1803, § 13. Process to parties, witnesses, or others, and all judicial orders of the court, in what language and manner to be issued. Powers of the court in cases of wilful disobedience or neglect, or of a false return.

R. 6, 1793, § 24 to 27; re-enacted for ceded provinces, in R. 5, 1803, § 24 to 27. Penalties for resistance to process.

<sup>1</sup> It may be proper to notice however, that in a case of resistance of civil process, referred to the sudder dewanny adawlut, in May, 1799, the judge of zillah Shahabad was informed by that court, that they did not consider Section 22, Regulation 4, 1793, to authorize or intend, a sequestration of the offender's lands, until the judgment of forfeiture be confirmed by the Governor General in Council. The terms of the rule indeed clearly express this, as they direct that "in the event of the Governor General in Council ordering the decree to be executed, the court is to issue a precept, requiring the collector of the zillah to depute an ameen to sequester the lands, and collect the rents and revenues." Section 24, of the same regulation, is likewise of similar tenor, respecting judgments for cancelling the leases of farmers who may resist the process of the civil courts.

R. 2, 1801, § 7; re-enacted for ceded provinces in R. 5, 1803, § 38. Rule to be observed, in cases of negligence or misconduct, in the discharge of official duty, not expressly provided for by the regulations.

The rules prescribed for receiving and trying charges of corruption or other charges of a serious nature, against the judicial officers, will be hereafter mentioned; but it may be added in this place, that any negligence or misconduct, in the discharge of official duty, not expressly provided for by the regulations, is to be reported to the court of sudder dewanny adawlut; who, after such enquiry as shall be judged necessary, in proof or explanation of the circumstances stated, are to report the case to the Governor General in Council, if it appear to require his notice or orders; with a copy of all proceedings and papers received on the subject. "The court of sudder dewanny adawlut is directed to report to the Governor General in Council all instances of wilful neglect of duty, or aggravated misconduct, by a covenanted servant of the Company employed in any of the civil courts, whether in a judicial or ministerial capacity; and whether such neglect or misconduct may have been reported by a provincial, zillah, or city court; or may otherwise appear from the proceedings and papers before the court. But if the case should appear to involve an error of judgment only; or a slight default, for which an admonition from the court may be deemed a sufficient correction, the court of sudder dewanny adawlut, in the former case, is authorized to notice the error, for the information and guidance of the party who may have committed it; or, in the latter case, to advise him of his default, and to admonish him accordingly."

R. 6, 1798, § 28; re-enacted for ceded provinces in R. 5, 1803, § 23. What adjournments of the provincial, zillah, and city courts, may be authorized by the sudder dewanny adawlut. R. 3, 1798, § 2; re-enacted for ceded provinces in R. 5, 1803, § 13. Two annual vacations, at the Dussarah and Mohurram festivals, prescribed for those courts.

R. 3, 1798, § 3. Sudder dewanny adawlut may be adjourned, or not, at discretion of the court. Reasons for allowing vacations, stated in preamble to R. 3, 1798.

The only further provision, immediately connected with the powers of the sudder dewanny adawlut, which it appears requisite to notice, under the head of that court, is that it "is empowered to permit the judges of the provincial, zillah, and city courts, to adjourn their respective courts occasionally, for any period not exceeding one month; so that such adjournments collectively do not exceed two months in each year." The provincial, zillah, and city civil courts are also to be annually adjourned during the Hindoo festival called *Dussarah*, which occurs in the Bengal month Assin or Cartic, corresponding with parts of the English months September and October; and during the Mahomedan festival, (or rather fast) *Mohurram*, which, depending on the lunar year, is not fixed to any particular month. The former adjournment, or *Dussarah* vacation, is to commence ten days before that festival, and to continue for one month of thirty days. The latter adjournment, or *Mohurram* vacation, is to commence five days before this festival, and to continue for fifteen days; or, as explained to the provincial, zillah, and city courts, by the sudder dewanny adawlut, with the sanction of the Governor General in Council, on the 31st May, 1803, is to commence on the first day of the month of *Mohurram*; and to continue for fifteen days from that date. When the two festivals may coincide, the vacations are blended, and the adjournments to be regulated accordingly. The court of sudder dewanny adawlut is authorized to adjourn the court during the periods of the two vacations, or otherwise, as it may judge proper.<sup>1</sup> The leave of absence usually solicited by the native officers and vakeels for celebrating the *Dussarah*, and *Mohurram* festivals, and at the same time visiting their families, formed a principal reason for authorizing a general adjournment of the civil courts at the periods of those festivals; in allowing which, it is further stated in the preamble to Regulation 3, 1798, the Governor General in Council had it in

<sup>1</sup> The court of sudder dewanny adawlut is further empowered, by Section 10, Regulation 1, 1806, "to authorize and direct an occasional dispensation with the rule for periodical vacations of the provincial, zillah, and city courts, contained in Regulations 3, 1798, and 8, 1805, in the instance of any particular court, wherein, from the arrears of business, or other cause, it may appear expedient that the vacations thereby provided for, or either of them, should not take place."

view "to enable such of the judges and registers, as may require temporary leave of absence from their stations for any private purpose, to apply for the same at a period when the adjournments of the civil courts may admit of it, with less public inconvenience than when both the civil and criminal courts are open; and in consequence of the opportunity thus given them to apply for leave of absence during the fixed vacations, it is expected they will not make such applications, at any other period, except in cases of indispensable necessity."

The judgments of the court of sudder dewanny adawlut are final and conclusive, in all cases heard and determined by that court, within the limitation prescribed by the Statute 21, George III. chapter 70, section 21; <sup>1</sup> viz. five thousand pounds; or, at the medium rate of exchange, fifty thousand current rupees. If the amount or value adjudged, (to be computed according to the general rules prescribed for determining the value of the same property, when constituting the cause of action in the sudder dewanny adawlut, and civil courts subordinate thereto,) be five thousand pounds; or current rupees fifty thousand; (being, exclusive of fractions, sicca rupees forty-three thousand one hundred and three;) an appeal lies to his Majesty in Privy Council, in conformity with the statute above quoted, and the regulations framed in pursuance of it. But no rules having been prescribed by the statute respecting the admission of the appeals thereby authorized; and it being necessary to establish such, as well for the information of the parties who might be desirous to appeal from decrees of the sudder dewanny adawlut; as for the guidance of that court in receiving and forwarding appeals presented to them; the Governor General in Council referred to the provisions made for appeals to the King in Council under his Majesty's charter for erecting the supreme court of judicature at Calcutta; as well as to the rules and orders framed by the supreme court, and approved by his Majesty in Council; and established the following rules, for appeals to the King in Council, from decisions passed by the court of sudder dewanny adawlut, to be in force until His Majesty's pleasure be known thereupon.—

"All persons desirous of appealing from a judgment of the court of sudder dewanny adawlut, to the King in Council, are required to present their petition of appeal to the sudder dewanny adawlut, either themselves, or through one of the authorized pleaders of that court, duly empowered to present such petition in their behalf, within six calendar months from the date on which the judgment appealed against may have been passed. In cases of appeal to His Majesty in Council, the court of sudder dewanny adawlut may either order the judgment passed by them to be carried into execution, taking sufficient security from the party, in whose favor the same may be passed, for the due performance of such order or decree as His Majesty, his heirs or successors, shall think fit to make on the appeal; or to suspend the execution of their judgment during the appeal, taking the like security, in the latter case, from the party left in possession of the property adjudged against him; but in all cases security is to be given by appellants, to the satisfaction of the sudder dewanny adawlut, for the payment of all such costs as the court may think likely to be incurred by the appeal; as well as for the performance of such order and judgment as His Majesty, his heirs or successors, shall think fit to give thereupon." After receiving such security, if the cause be appealable, and the petition of appeal shall have been presented within the prescribed period, "the court of sudder dewanny adawlut are to declare the appeal admitted, and to give notice thereof to the appellant and respondent; that they may take measures, the one to prosecute, the other to defend, the cause in

R. 16, 1797; re-enacted for ceded provinces by R. 5. 1803, § 31 to 36. In what cases an appeal lies from the judgments of the sudder dewanny adawlut to the King in Council.

Necessity of rules for receiving and forwarding such appeals.

Rules established for those purposes. Petition of appeal required to be presented within six months. Court may execute, or suspend execution of, the judgment appealed from, taking sufficient security.

Security to be also given by appellants for eventual costs.

Appeal when to be admitted; and notice given to the parties.

<sup>1</sup> Already cited in page 22.

Rules stated are subordinate to the full exercise of His Majesty's pleasure.

R. 16, 1797, § 5, 6. R. 7, 1800, § 19. R. 2, 1801, § 16. R. 5, 1803, § 34, 35. Copies and translations of all proceedings and papers relative to appealed cases to be transmitted to His Majesty in Council.

Parties also entitled to receive copies on paying the expense of making them upon stamp paper.

R. 19, 1797, § 4 and 5. R. 2, 1801, § 17 to 19. R. 4, 1803, § 31 to 33. By whom translations of papers, in the country languages, are to be made; when required in appeals to the King in Council, or for any special purpose.

R. 2, 1801, § 16 to 19. English proceedings of sudder dewanny adawlut

appeal before his Majesty in Privy Council, according to the established mode of proceeding in similar cases." It is at the same time provided by the regulations, which contain the above rules, "that nothing therein shall be understood to bar the full and unqualified exercise of His Majesty's pleasure, upon all appeals to him from the decisions of the sudder dewanny adawlut, either in rejecting any he may consider inadmissible under the statute respecting such appeals; or in receiving any he may judge admissible," notwithstanding the provisions made for the guidance of the sudder dewanny adawlut. It is further directed, that in all cases wherein that court may admit an appeal to the King in Council, they are to cause two exact copies to be made on stamp paper, at the expense of the appellant (paupers excepted), of all the proceedings held, and judgments or orders given, in the case appealed; including the whole of the evidence and documents (with an English translation of all papers in any of the country languages) as well as a copy of, or extract from, any local regulation referred to in the judgments passed by any of the courts, wherein the cause appealed may have been tried and decided; and are to transmit the same, as soon as prepared, under their official seal, and the signature of their register, to the Governor General in Council; for the purpose of being forwarded, by the first secure and separate conveyances, to His Majesty in Council. On the application of the appellant, or respondent, the register to the sudder dewanny adawlut is also to furnish them with one or more copies of the proceedings held, and judgments or orders passed, in the case appealed; provided they respectively agree to defray such expense as may be incurred in making the same upon stamp paper; but not otherwise.<sup>1</sup>

When translations are required of the proceedings held in a zillah, city, or provincial court, or in the sudder dewanny adawlut, in consequence of an appeal to His Majesty in Council, or for any special purpose, it is the province of the registers and assistants to the several courts to make the translations required from them respectively. But if, at any time, their other official avocations should not admit of their making such translations with the requisite dispatch, the court of sudder dewanny adawlut are empowered to authorize the employment of any person or persons, possessing an adequate knowledge of the original language, to make the same; at the established rate of one sicca rupee for one hundred words of the original language; (or the same rate for figures, calculating five figures for a word) subject to the revision of the register to the provincial, zillah, or city court, from which such translation may be demandable; who, in such instances, is to counter-sign the translation; and is held responsible for the accuracy of it. The proceedings of the court of sudder dewanny adawlut (as well as of the nizamat adawlut) were formerly kept in the English language, and copied for transmission to the Governor General in Council, and the Honorable Court of Directors. It was in consequence necessary, at that time, to require complete translations of the proceedings held upon all causes appealed to the sudder court. But under the new constitution of the court, made by Regulation 2, 1801, the practice of keeping English proceedings, except as far as convenient for miscellaneous English correspondence, and conducive to regularity, was discontinued; and copies of the court's proceedings were not required

<sup>1</sup> On the 3rd May, 1798, the court of sudder dewanny adawlut, with the advice of the advocate general, made a rule, that original documents shall not be returned during appeals to the King in Council; but that authenticated copies be delivered on application of the parties who exhibited them. The court also resolved, on the 11th April, 1799, not to take or receive, further evidence offered in a cause appealed to the King in Council, without instructions for that purpose from His Majesty in Council.

to be furnished in future, except in cases of appeal to His Majesty in Council, or of reference to the Governor General in Council, as prescribed by the regulations. The office of translator to the courts of sudder dewanny adawlut (and nizamat adawlut) was therefore abolished; and the provincial, zillah, and city courts were exempted from the duty of sending translations, with papers in the country languages, except in cases wherein they might be required by the precepts of the sudder dewanny adawlut; or by any regulation or order expressly requiring the same. The saving of expense, time, and labor, in translating voluminous records, and in transcribing the translations when made, was not the only advantage which resulted from the alteration thus adopted in the proceedings of the superior civil and criminal courts. The original proceedings held before the zillah, city, and provincial courts, are now read before the court of sudder dewanny adawlut, (as well as the proceedings of the courts of circuit upon criminal trials before the nizamat adawlut,) instead of the English translations which were formerly substituted; and must obviously bring before the judges a more accurate exhibition of the pleadings of the parties, as well as better evidence upon the merits of the case, than could, in general, have been obtained from a version of them in another language. It may be added, that, with a view to furnish the Court of Directors, and the Governor General in Council, with the information before submitted to them in copies of the proceedings of the sudder dewanny adawlut, and nizamat adawlut; and in a form better calculated to afford a ready knowledge of the judgments, and sentences, passed by those courts; it was proposed by the courts, and approved by Government, to prepare an annual report, from the commencement of the year 1805, of all civil causes adjudged by the sudder dewanny adawlut; and of all trials, on which sentence may be passed by the nizamat adawlut. A deputy register, and a second assistant, were added to the establishment of the courts, for the purpose of preparing such reports; of which copies are to be transmitted to the Governor General in Council and Court of Directors; and cases of importance are selected from them, by the judges, to be published, with the approbation of Government, for general information.<sup>1</sup> It cannot be necessary to enlarge upon the utility of this measure, as calculated to establish precedents, and to promote the uniform administration of justice, in cases not expressly provided for by the laws and regulations. Nor does it appear requisite to offer any comment, in addition to what has been quoted from the preambles to Regulations 2, 1801, and 10, 1805, on the amended constitution of the principal civil and criminal courts, provided for by those regulations.

and nizamat adawlut discontinued under the new constitution of those courts; and advantages which have resulted from it.

Report of civil judgments, and criminal sentences to be prepared, from the commencement of 1805, for the information of Government, and the Court of Directors.

And cases of importance to be selected from such reports for publication.

<sup>1</sup> A volume, containing "Reports of select causes adjudged in appeal before the sudder dewanny adawlut, previously to the year 1805, and from that year to the end of 1811;" with a second volume, containing "Reports of select criminal cases adjudged by the court of nizamat adawlut, from the year 1805, to the end of 1811;" had been printed, with an index to each volume, before the author of this Analysis left India, at the beginning of 1819.

*Special or Second Appeals.*

Provisions for special appeals in regular suits, contained in R. 49, 1803, § 24; R. 2, 1805, § 10, and R. 8, 1805, § 9.

Modifications of above rules in R. 26, 1814, § 2.

In what cases only special, or second appeals to be admitted, after 1st Feb. 1815.

Party to present a petition to the court competent to admit such special appeal.

Such petition to be written on stamp paper of what description, and what it is to contain.

Mode of proceeding when a special appeal may be admitted.

Courts authorized to refund a portion of the stamp duty in certain cases.

In addition to the provisions for appeals in regular suits, which have been detailed under the respective heads of the several civil courts, the provincial courts of appeal and court of sudder dewanny adawlut were vested by Section 24, Regulation 19, 1803, (extended to the ceded and conquered provinces in Section 9, Regulation 8, 1805) and by Section 10, Regulation 2, 1805, with a discretionary authority, in all cases not open to regular appeal, to admit a special appeal (on performance of the general conditions of appeals) if, on the face of the decree appealed from, or from any information before the court, it should appear to be erroneous or unjust; or if from the nature of the cause, as stated in the decree or otherwise, it should appear to be of sufficient importance to merit a further investigation in appeal. In modification of the rules abovementioned, it was enacted in Section 2, Regulation 26, 1814, that "after the 1st February, 1815, no special or second appeal shall be admitted by a zillah or city judge, by a provincial court, or by the sudder dewanny adawlut, unless upon the face of the decree, or of documents exhibited with it (assuming all the facts of the case as stated in the decree,) the judgment shall appear to be inconsistent with some established judicial precedent, or with some regulation in force, or with the Hindoo or Mahomedan law, in cases which are required to be decided by those laws, or with any other law or usage which may be applicable to the case, or unless the judgment shall involve some point of general interest, or importance, not before decided by the superior courts. *Second.* When a party, upon any of the grounds specified in the preceding clause, may be dissatisfied with a judgment passed on a regular appeal, by a competent civil court, and may in consequence be desirous of obtaining a further investigation of the suit by a second or special appeal, he shall, within the limited periods prescribed for the admission of regular appeals, present a petition to the court, which under the provisions of Regulations 24 and 25, 1814, may be competent to admit a special appeal in the case. *Third.* Such petition shall be written upon the stamp paper prescribed in Section 13, Regulation 1, 1814, with reference to the value or amount of the suit, calculated according to the provisions of Section 14, of that regulation, or any provisions which may be hereafter enacted for the valuation of property sued for in the civil courts; the petition shall state distinctly the specific ground or grounds under clause first of this section, on which the special appeal is solicited; and shall be presented either by the party in person, or by an authorized pleader of the court. In the latter case, the petition shall be signed by the pleader, who shall certify on the back of the petition, that he has duly considered the grounds stated for admitting a special appeal under clause first of this section, and believes them to be well-founded and sufficient. *Fourth.* If, on consideration of the circumstances of the case, the court shall see reason for admitting a special appeal on any of the grounds stated in the first clause of this section, the appellant shall be required to furnish the prescribed security, and to deposit the amount of the fees payable to his pleader under the rules in force, within a reasonable period to be fixed by the court. When the required security and deposit shall have been duly furnished, the court will admit the special appeal, and proceed to investigate the suit under the same rules as are prescribed for the trial and determination of regular appeals. *Fifth.* If the court shall not see sufficient reason for admitting the special appeal, and shall in consequence reject the petition, the appellant shall not be entitled to receive back the amount or value

of the stamp on which the petition may have been written under clause third : the courts are however vested with a discretionary authority, in any particular instance of hardship, to refund any portion not exceeding three fourths of the amount of such stamp duty, to the party who may have paid the same, or to his legal representative. *Sixth.* It is hereby declared, that the order of a zillah or city judge, or of a provincial court, refusing to admit a special or second appeal under the powers vested in them by this regulation, as well as the judgments which they may respectively pass on special appeals admitted by them, shall in all cases be final, and shall not be liable to any further revision by a superior court. *Seventh.* When an application for a special appeal presented through an authorized pleader to a zillah or city court, or provincial court, or to the sudder dewanny adawlut, may be rejected by the court, such pleader shall be entitled to receive from the party employing him any remuneration for his trouble which the court may think proper to adjudge ; provided, that such remuneration shall in no case exceed one fourth of the amount of the fee, to which the pleader would have been entitled, had the special appeal been admitted and determined by the court."

The following additional rules respecting second appeals are enacted in Sections 7 and 8, of Regulation 19, 1817. § 7. "*First.* The restrictive provisions for second, or special appeals, prescribed in the first clause of Section 2, Regulation 26, 1814, allow of such appeals being admitted, when the judgment, against which the appeal may be preferred, shall appear to be inconsistent with some established judicial precedent : but this is not understood to include the case of two opposite or inconsistent judgments passed by the same court, or by two courts having jurisdiction in the same suit, or in suits founded on a similar cause of action ; though in such cases it is obvious that one or both of the opposing judgments should be revised. It is therefore hereby provided, in addition to the grounds on which second or special appeals are declared admissible, in the first clause of Section 2, Regulation 26, 1814, that such appeals may be admitted, when the judgment against which the appeal is preferred shall, from the exhibition of another decree of the same court, or of another court having jurisdiction in the same suit, or in a suit founded on a similar cause of action, clearly appear to be in opposition thereto, or inconsistent with such other judgment. *Second.* The court empowered to receive the special appeal in such cases shall be competent either to try the merits of the case, and pass a final judgment thereupon ; or to refer the suit back for revision, and a further judgment by the court which shall have passed the original decision, or that given on the first appeal." § 8. "In the special appeals provided for by the foregoing section, as well as in all other appeals, regular or special, under the regulations in force, if the suit in appeal be referred back for further investigation and decision, without a judgment upon the merits of the case, the stamp duty paid by the appellant on his petition of appeal shall be returned to him ; and if the appellant, or respondent, have appointed a pleader, his fee shall be limited to such sum as may be deemed an adequate compensation for his labor, not exceeding one fourth of the established fee in a regular suit."

Experience having shown, that it would be conducive to the ends of justice, to modify and extend the rules above stated, which limit to certain specific grounds the admission of special appeals by the sudder dewanny adawlut, and by the provincial courts of appeal ; the following further provisions, which are now in force, were enacted in Regulation 9, 1819.

§ 2. "*First.* The rules contained in Clause first, Section 2, Regulation 26, 1814, as far as regards the grounds for the admission of special appeals by the provincial courts of appeal and by the sudder dewanny adawlut, are hereby amended as follows. *Second.* In extension of the grounds to which

\* when the petition for a special appeal may be rejected.

All orders passed by competent courts regarding special appeals to be final.

Pleaders entitled to certain fees on the rejection of special appeals.

Additional rules enacted in R. 19, 1817, § 7, 8.

Section 7. Special appeals allowed, in cases where decrees passed by one or more courts are inconsistent with each other.

The court receiving an appeal may proceed and pass a final judgment or refer the suit back for revision.

Section 8. Stamp duty to be refunded in cases where appeals are referred for further investigation.

Limitation of the fee to be paid to pleaders in such cases.

Reason for amending the above rules, as stated in preamble to R. 9, 1819.

Section 2. Clause 1, Section 2, Regulation 26, 1814, amended. Enlarged



power of courts of appeal to admit special appeals.

Section 3. Judges of zillah and city courts may recommend the admission of special appeals in certain cases.

Provincial courts may also recommend the admission of special appeals. The rejection of a special appeal by a provincial court not to be final, but on stated grounds the sudder dewanny adawlut may direct its being admitted.

Section 4. Courts empowered to require the production of papers previous to admitting special appeals.

Section 5. No special appeals to be admitted without the concurrence of two judges.

the admission of special appeals is limited by the clause and section above quoted, it is hereby declared competent to the provincial courts of appeal, and to the sudder dewanny adawlut, to admit a second or special appeal, whenever on a perusal of the decree of the lower court, from whose decision the special appeal is desired, there may appear strong probable ground, from whatever cause, to presume a failure of justice." § 3. "First. It is hereby declared competent to the judge of a zillah or city court, in any case in which no further regular appeal is open under the existing regulations, but in which either of the parties may be desirous of a further special appeal, to certify to the provincial court (where the circumstances demand it) that such case involves some point of general importance hitherto apparently unsettled, and fit to be reconsidered in a further appeal. *Second.* The provincial courts are also declared competent to certify similarly, under analogous circumstances, to the sudder dewanny adawlut. *Third.* In the event of a provincial court declining under the provisions of the second and following clauses of Section 2, Regulation 26, 1814, to admit a second or special appeal in a case certified to them as above, from a zillah or city court, and rejecting accordingly the special appeal, such rejection shall not be final; but it shall be competent to the sudder dewanny adawlut, on petition by the party desiring the special appeal, to direct the provincial court to admit it, if on a consideration of the grounds which may be exhibited for a special appeal, it shall appear proper to the sudder dewanny adawlut so to direct, under the provisions of Clause first, Section 2, Regulation 26, 1814, as amended by this Regulation." § 4. "The sudder dewanny adawlut and the several provincial courts, previously to admitting a special appeal on application to them to that effect, are hereby declared competent to call for and peruse any document forming part of the record of the cause which they may deem proper, besides the document or documents presented by the party applying for the special appeal." § 5. "No special or second appeal shall be admitted hereafter by a provincial court, or by the sudder dewanny adawlut, unless two judges concur in the propriety of its admission under the rules applicable to the case, as amended by this regulation." § 6. "It is hereby declared, that nothing contained in the foregoing sections, is intended to make any alteration in the existing rules with regard to the limitations of time, or with regard to any of the existing forms requisite for the admission of special appeals."

### *Summary Appeals.*

Provisions for summary appeals contained in R. 2, 1801, § 8, 9; R. 4, 1803, § 12; R. 49, 1803, § 26; and R. 2, 1805, § 11; rescinded and amended rules substituted by R. 26, 1814. Cases in which the sudder dewanny adawlut and provincial courts may admit a summary appeal.

The provisions for summary appeals, which were enacted in Sections 8 and 9 of Regulation 2, 1801; Section 12, of Regulation 4, 1803; Section 26, of Regulation 49, 1803, and Section 11, of Regulation 2, 1805, having been rescinded by the first clause of Section 3, Regulation 26, 1814, it will be sufficient to state the amended rules for such appeals, which are now in force, under the second and succeeding clauses of the section last mentioned—viz.

"*Second.* It shall be competent to the sudder dewanny adawlut to receive a summary appeal from the orders or decrees of the provincial courts, in all cases in which the latter may have refused to admit an original suit or appeal, regularly cognizable by them; or having admitted such suit, on appeal, may have dismissed it on the ground of delay, informality, or other default, without an investigation of the merits of the case. *Third.* In like manner, it shall be competent to a provincial court to receive a summary appeal from the orders or decrees of the zillah or city courts, in cases, in which the latter may have refused to admit an original suit or appeal, regularly cognizable by them; or having admitted such suit or appeal, may have dismissed it, without an in-

vestigation of the merits on the ground of delay, informality, or other default. *Fourth.* On the same principle it shall be competent to the zillah or city judges to receive a summary appeal from the orders or decrees of a register, or sudder ameen, in cases in which the register or sudder ameen may have dismissed, on the ground of some default, and without an investigation of the merits of the case, any original suit or appeal regularly referred to them. *Fifth.* In all the preceding cases, the summary appeal shall be preferred within the same limited period as is prescribed for the admission of regular appeals, and subject to the provisions contained in the following clauses. *Sixth.* Whenever a party may be desirous of preferring a summary appeal in the cases abovementioned, he shall appear either in person, or by a vakeel duly authorized, before the court, which, under the preceding rules, may be competent to receive such appeal; and shall present a petition, written on the stamp paper, prescribed by Section 18, Regulation 1, 1814, and accompanied by an attested copy of the order or decree passed in the case. *Seventh.* The party presenting such petition, shall not be liable to the payment of the stamp duty, substituted for the institution fee, by Section 13, Regulation 1, 1814; nor shall he be required to furnish the deposit for the fee of his vakeel, or any security, except such as may be eventually necessary under the regulations in force, for staying the execution of the decree, from which the appeal may be preferred. *Eighth.* It shall not be requisite to give any notice to the respondent, or to require his attendance on such summary appeal being preferred, unless in any particular instance the court may deem it proper to adopt that measure; nor shall any pleadings or proceedings be holden on such summary appeal, excepting such as may suffice to determine whether the suit was or was not rejected or dismissed by the lower court on sufficient grounds, and in conformity with the regulations. *Ninth.* If upon such summary proceedings, it shall appear to the court, that the suit was rejected in the first instance, or after being admitted, was dismissed without an investigation of the merits, upon insufficient grounds; or in opposition to the regulations; it shall be competent to the sudder dewanny adawlut, to the provincial courts, and to the zillah or city judges respectively, to direct the lower court or officer, from whose order or decree the petition of appeal may have been presented, to receive the original suit or appeal, or to revive it, if it shall have been received and dismissed, and to try and determine such cause on its merits, according to the regulations. *Tenth.* If on the contrary such summary appeal shall be found to be groundless and litigious, the sudder dewanny adawlut, the provincial courts, and the zillah or city judges, are respectively authorized and required to reject the petition for a summary appeal, and to impose such fine on the litigious appellant, as may appear to be in each instance proportionable to the condition of the party, and to the circumstances of the case; provided that such fine shall in no case exceed the amount of the stamp duty, which would have been payable by the appellant on the institution of such case, as a regular suit or appeal. All orders, imposing fines, or rejecting petitions of summary appeal, which may be passed under the preceding clause, by the sudder dewanny adawlut, the provincial courts, or by the zillah or city judges, shall be final and conclusive. *Eleventh.* When a pleader may be employed in such summary appeals, the court is authorized to, award to him such fee as may be considered to be a sufficient compensation for his labor; provided that it shall, in no case, exceed one fourth of the fee to which such vakeel would have been entitled, if the suit had been instituted, either as an original suit, or as a regular appeal."

Cases in which the zillah or city judges may admit a summary appeal.

Limitation of time for the admission of summary appeals. The petition for a summary appeal to be written on what stamp paper.

Party not liable to pay the institution fee nor to furnish the usual deposit or security.

Exception. Made of proceeding in summary appeals.

In what cases the lower courts may be directed to receive or to revive the suit.

In what cases the courts may reject the summary appeal, and fine the appellant.

What fee to be received by pleaders in such cases.

R. 5, 1796, § 7.  
R. 7, 1799, (18).  
R. 26, 1803,  
§ 36.

It may be proper to add, under the head of summary appeals, that the summary processes authorized by the regulations, in cases of forcible dispos-

R. 32, 1803, §3. In what cases only an appeal is open to the provincial courts from the judgments of the zillah and city courts, in summary processes relative to forcible dispossession, and arrears of rent.

session, and arrears of rent, being subsidiary to a regular suit in the zillah and city courts, no appeal from the summary judgments of the zillah and city courts, in such cases, is admissible, unless the ground of appeal be the irrelevancy of the regulations, which authorize a summary process, to the case appealed. After receiving the appeal, the provincial court are to dismiss it, with costs, if the stated ground of irrelevancy shall not appear to be established; or, on the other hand, if the regulations for summary process appear to be inapplicable to the case, they are to reverse the irregular judgment given by the zillah or city court; and to pass such order thereupon as they may think just and proper.<sup>1</sup>

### *Vakeels, or Native Pleadors.*

R. 7, 1793, extended to Benares by R. 13, 1796, and re-enacted for ceded provinces in R. 10, 1803. Reasons for the appointment of native pleaders in the several courts; and objects of the rules concerning them.

To save the necessity of the personal attendance of suitors in the courts of civil judicature, and to obtain for them, in pleading their causes, the assistance of men of character and education, versed in the Mahomedan, or Hindoo law, as well as in the regulations of the British Government, provision was made, by the regulations noted in the margin, for the appointment of vakeels, or native pleaders, in the zillah and city courts, the provincial courts of appeal, and the sudder dewanny adawlut; under rules and restrictions, calculated to secure to their clients a diligent and faithful discharge of their trust. The preamble to Regulation 7, 1793, sets forth, at length, the general disqualifications of the persons before employed, occasionally or professionally, as pleaders; who by their ignorance of the laws and regulations, and imperfect knowledge of judicial proceedings, as well as from their being liable to collusion and intrigue with the ministerial officers of the courts, impeded and prevented, instead of aiding and promoting, the speedy and impartial administration of justice. The people, in general, are at the same time necessarily precluded, by their pursuits and occupations in life, from attending the courts of justice; or acquiring a sufficient knowledge of the laws and regulations to enable them to plead their own causes. It was therefore indispensably necessary that the pleading of causes should be made a distinct profession; that none but persons duly qualified should be admitted to plead in the courts of judicature; and that, with a view to induce men of education and character to undertake the office of pleader, to prevent their being deterred from pleading the causes of their clients with becoming freedom, and to ensure integrity and fidelity in the execution of their duties, their appointments should be secured to them as long as they conform to the regulations prescribed for their guidance; and they should be entitled to receive a fixed and liberal compensation, proportionate to the amount or value of the cause of action in the suits wherein they might be employed. It is unnecessary to detail the rules enacted for the above purposes in Regulation 7, 1793; Section 4, of Regulation 16, 1793; Section 2, of Regulation 15, 1795; Section 4, of Regulation 21, 1803; Regulation 13, 1795; Regulation 8, 1796; Sections 4 and 5, of Regulation 8, 1797; Sections 9 to 15, of Regulation 5, 1798; Sections 3 and 4, of Regulation 3, 1802; Regulation 10, 1803; and the third clause of Section 6, Regulation 13, 1808; as the whole of these rules have been rescinded by Section 2, of Regulation 27, 1814, "for reducing into one regulation, with amendments and modifications, the several

Former rules rescinded by R. 27, 1814, §2.

<sup>1</sup> The regulations which authorize a summary process in cases of forcible dispossession from land, crops, or other property, for immediate recovery of possession, have been stated, under the head of *Zillah and City Courts*, page 79. Those which relate to a summary process for the recovery of arrears of rent, too considerable to be realized by distress of personal property, are cited in the third volume of this Analysis, page 541, under the head of *Receipt and enforcement of rents*.

rules which have been passed regarding the office of vakeel or native pleader in the courts of civil judicature." The preamble to that regulation states it to have been "deemed expedient to transfer to the provincial courts the control exercised by the sudder dewanny adawlut in the appointment and removal of vakeels or native pleaders in the zillah and city courts; and in the provincial courts:" and that "the speedy adjustment of disputes may be facilitated by empowering the authorized vakeels to receive certain fees for legal opinions furnished by them, and by vesting them with authority to act as arbitrators under the general regulations:" for which purposes, and with the view of promoting the public convenience by including the whole of the provisions respecting the office of vakeel in one regulation, the following rules were enacted, to be in force from the 1st of February, 1815, throughout the whole of the provinces immediately subject to the presidency of Fort William. § 3. "First. The sudder dewanny adawlut and the several provincial courts are empowered to appoint to the office of vakeel, in their respective courts, such a number of persons being natives of India, and duly qualified for the situation, as may, from time to time, appear to them to be necessary. Second. Whenever the appointment of a vakeel may be requisite in any of the zillah or city courts, the judge of such zillah or city shall nominate, for the approbation of the provincial court of the division, some person being a native of India and duly qualified for the situation; and shall communicate to the provincial court such information as he may have obtained regarding the age, capacity, character, education, and past employment of the individual, whom he may recommend; and no person shall be authorized to practise as a vakeel in any zillah or city courts without the previous sanction of the provincial court. Third. In the nomination and appointment of persons to the office of vakeel, the judges of the sudder dewanny adawlut, of the several provincial courts, and of the zillah and city courts, are restricted to individuals of the Hindoo and Mahomedan persuasion, and are required to give the preference to candidates who may have been educated in any of the Mahomedan or Hindoo colleges established or supported by Government, provided that such candidates are in other respects duly qualified for the situation." § 4. "First. Persons who may hereafter be appointed to the office of vakeel in the zillah and city courts, the provincial courts, or the sudder dewanny adawlut, shall receive a sunnud of appointment duly authenticated by the court, to which they may be respectively attached. This sunnud, which is not required to be written on stamp paper shall be drawn up according to the form No. 1, in the appendix to this regulation. Second. Whenever a vakeel may be dismissed from his office, or may die, or may resign his situation, his sunnud of appointment shall be recalled and cancelled by the court, to which such vakeel may have been attached." § 5. "First. Every vakeel, previously to being allowed to practise, shall take and subscribe before the court, to which he may be appointed, an oath, drawn up according to the form No. 2, of the appendix to this regulation, or a solemn declaration in lieu

Preamble to that Regulation.

Section 3. The sudder dewanny adawlut and the provincial courts empowered to appoint the vakeels of their respective courts.

Vakeels of the zillah and city courts to be nominated by the judges of those courts for the sanction of the provincial courts.

Pleaders to be either of the Hindoo or Mahomedan religion.

Preference to be given to candidates of a certain description.

Section 4. Pleaders to receive a sunnud from the courts to which they may be appointed.

The sunnud to be of a prescribed form. And to be cancelled on the death, removal, or resignation of the pleaders.

Section 5. Pleaders to take an oath according to the prescribed form; or a solemn declaration in lieu thereof;

#### *1 Sunnud to be granted to Vakeels.*

"In conformity with the provisions of Regulation 27, 1814, you A. B. are hereby appointed to the office of pleader in the sudder dewanny adawlut, or in the provincial court, for the division of \_\_\_\_\_, or in the zillah or city court of \_\_\_\_\_. You will not be liable to be removed from your situation so long as you may conduct yourself with propriety, and discharge your duty with zeal and integrity, under the rules contained in the Regulations which now are, or may hereafter be, in force."

<sup>2</sup> The oath is discontinued; and the following solemn declaration, prescribed in all cases, by Section 2, Regulation 18, 1817—quoted at length in the Sequel, under the head of *Native Officers of the Courts of Judicature*.

"I A. B. solemnly declare, that I will truly and faithfully execute the duties of pleader of the sudder dewanny adawlut, or the provincial court, for the division of

but not the half yearly retrospective oath formerly prescribed for Mahomedan pleaders. Section 6. Pleaders liable to be dismissed for certain acts of misconduct.

Section 7. Agreements to receive less than the authorized fees declared to be illegal, and vakeels liable to dismission when parties to such agreements.

Section 8. Pleaders accepting vakalutnamahs in fictitious names liable to be dismissed.

Section 9. Vakeels required to examine and sign the pleadings before they are filed.

Pleaders to examine exhibits previously to their being filed on the part of their clients. And not to summon witnesses without previously ascertaining to what points their testimony is required. Pleaders to be censured and eventually dismissed for breach of the preceding rules.

Section 10. The sudder dewanny adawlut and the

thereof, under the provisions now in force, or any other provisions which may be hereafter enacted. *Second.* The Mahomedan pleaders attached to the several courts of civil justice shall no longer be required to take the half yearly retrospective oath heretofore prescribed by the regulations." § 6. "Pleaders, employed in the several courts of civil judicature, shall be liable to dismission from their office whenever they may be guilty of encouraging or promoting litigious suits; of wilfully delaying the suits of their clients for their own advantage; of refusing or omitting, without sufficient cause to be shown to the court, to carry on the suits of their clients, after having accepted a vakalutnamah; of demanding or accepting from their clients any fee, or sum of money, goods, effects, or other valuable consideration beyond the fees, which they are or may be authorized to receive under the regulations; or of fraudulent practices, neglect, or other misconduct, in the discharge of their professional duty; or of gross profligacy or misbehaviour in their private conduct." § 7. "All agreements, which may be entered into between pleaders and their constituents, for paying or receiving less than the established fees, are to be considered null and void; the whole of the vakeels' fees, which may be payable by the party in such cases, shall be forfeited to Government; and the pleader who may be convicted of having been a party in such illicit agreement, shall be liable to immediate dismission from his office." § 8. "The vakeels are required to use due precautions to ascertain the real names and the identity of persons, who may propose to employ them as pleaders; and any authorized vakeel, who shall hereafter receive and file a vakalutnamah from any person under a fictitious name, shall be liable to be dismissed from his office; provided however, that the judge upon full enquiry into the circumstances of the case, and the provincial court, on consideration of the judge's report, shall deem him to be deserving of such punishment." § 9. "*First.* The vakeels are hereby enjoined not to file any plaint, answer, or other pleading, without previously ascertaining that such pleading has been duly prepared in conformity with the regulations; that it contains no unnecessary repetitions of former pleadings; no terms of personal abuse or reproach against the opposite party, his vakeels, witnesses, or other persons; and no groundless imputations on any court of justice or public officer; but that it contains such matter only as is apparently material, and relevant to the suit. Every pleading filed by an authorized vakeel shall be signed by him in testimony of his having considered and approved its contents. *Second.* In order that the expense, trouble, and inconvenience frequently experienced by filing irrelevant exhibits, and by summoning useless witnesses, may be avoided, the vakeels are hereby further required to examine the documents, which their constituents may propose to exhibit in proof of their claims, previously to their being filed in court; and to ascertain from their constituents, previously to summoning any witnesses, the specific points which such witnesses are expected to prove by their testimony. *Third.* The courts will carefully point out to the notice of the vakeels such parts of the pleadings as are evidently irregular, irrelevant, or otherwise objectionable, and shall record their censure of any vakeel, whose conduct in opposition to the preceding rules, may in any particular instance, demand such animadversion. If notwithstanding such recorded censure, a vakeel shall again be guilty of similar misconduct, he shall be liable to forfeit in each instance the amount of the fee to which he may be entitled in the suit, or to such other fine to Government not exceeding twenty rupees as the court may deem it proper to impose." § 10. "*First.* The sudder dewanny adawlut, and the several pro-

, or the adawlut of the zillah or city of , to the best of my knowledge and judgment."

vincial courts will, at all times, exercise their discretion in removing from his office any pleader of their respective courts, who may be guilty of any of the acts abovementioned, or who may be otherwise deemed unfit for the situation. *Second.* Whenever a zillah or city judge shall be of opinion that a vakeel, attached to his court, or to that of a register, or any of the sudder ameens, is unfit for the situation, in consequence of his having been guilty of any of the acts mentioned in the preceding sections, or that he is otherwise disqualified for the office of pleader, the judge shall report the circumstances of the case, together with his own opinion upon it, to the provincial court, who will pass such orders on the case as may appear to be proper, or will call for any additional information, or direct any further inquiry that the nature and circumstances of each case may appear to demand." § 11. "The zillah and city judges are empowered, without the previous sanction of the provincial court, to suspend from his office any pleader attached to their courts, who may be guilty of any gross act of fraud or misconduct; but in such instances it shall be the duty of the judge to report the circumstances of the case, with as little delay as possible, for the information and orders of the provincial court." § 12. "*First.* The parties in a cause are authorized to prosecute their respective pleaders in the civil courts of judicature for any damages or injury, which they may have sustained from any breach of the regulations on the part of their pleaders, or from any fraudulent conduct or malpractices committed by their pleaders regarding the suit. *Second.* Any party in a suit, who may be dissatisfied with the conduct of his pleader, shall be at liberty, at any stage of the trial previously to the decision, to withdraw the power delegated to his pleader and to appoint another vakeel to plead the cause. In such cases the party is to present a petition to the court, notifying that he has withdrawn the management of the suit from such pleader, and is to file a new vakalutnamah in the name of the pleader, whom he may appoint to carry on the suit; all acts however which may have been done by the first pleader on the part of his client, previously to his having been dismissed, are to be held valid. On the conclusion of the suit, the court will exercise its discretion in awarding to the pleader first employed, any portion of the authorized fee to which he may appear justly entitled on a consideration of the trouble which he may have undergone, and the other circumstances of the case." § 13. "If a pleader should be unable to attend the court in consequence of indisposition, or other sufficient reason, he is to notify the same in writing to the court, on unstamped paper, and the hearing of any cause, in which such pleader may be employed, is to be postponed to a future day, unless the party or his authorized agent shall commit the management of the cause to any other pleader of the court, or unless the party himself shall be present and willing to plead the cause in person. If the management of the cause shall be entrusted to any other pleader of the court, instead of filing a new vakalutnamah, it shall be sufficient for the party or his mokhtar duly authorized, to endorse on the back of the original vakalutnamah, a written declaration, that he has appointed some other vakeel of the court to conduct the cause, either permanently or during the absence of the pleader first appointed; on passing a decision in such cases, the court shall direct the amount of the authorized fee to be divided between the two pleaders in such proportions as may furnish an equitable remuneration for the trouble which they may have respectively undergone." § 14. "*First.* If a pleader shall fail to attend in court on any day fixed for the transaction of civil business, and shall omit to notify in writing to the court his inability to attend, in consequence of indisposition or other sufficient cause, the court is authorized to impose on such pleader, a fine, for the first offence, not exceeding the sum of fifty sicca rupees; and for the second offence, not exceeding

provincial courts authorized to dismiss the pleaders of their respective courts.

Misconduct or disqualifications of pleaders attached to the zillah and city courts to be reported by the judges of those courts to the provincial courts.

Who will pass such order thereon as may be proper.

Section 11. Pleadings attached to zillah and city courts may be suspended from office without the previous sanction of the provincial court.

Such cases to be immediately reported for the information and orders of the provincial court.

Section 12. In what cases the pleaders are liable to be prosecuted in the civil court by their clients.

Parties may withdraw the management of a depending suit from their pleaders, and may appoint new pleaders in their room. The court may award to a pleader so removed any portion of the fee which may be proper.

Section 13. Measures to be adopted when a pleader may be unable to attend the court from indisposition or other sufficient cause.

Section 14. Penalties for pleaders absenting themselves from court without notifying the cause of their absence.

Plead-  
ers may  
be fined 100  
rupees for dis-  
respect to the  
court.

Section 15.  
Fines imposed  
on pleaders by  
the sudder ame-  
ens to be  
reported to  
the zillah or  
city judge.  
The orders of  
zillah and city  
judges, and re-  
gisters impos-  
ing fines on  
pleaders to be  
conclu-  
sive.  
Proviso.

Section 16.  
Vakeels not  
allowed to  
plead in other  
courts than in  
those to which  
they may be  
attached.  
Exceptions.

Section 17.  
Vakeels probi-  
bited from be-  
ing employed  
as agents or  
mokhtars in  
the fonjdaree  
courts of the  
zillahs and ci-  
ties.

Section 18.  
Publication to  
be issued on  
the death, re-  
signation, or  
removal of a  
pleader in a  
zillah or city  
court.  
What the pub-  
lication is to  
contain.

Such publica-  
tion to be con-  
sidered a good  
and sufficient  
notice.

one hundred sicca rupees. If such pleader shall be guilty of a similar offence a third time, he shall be liable to dismissal from his office. *Second.* If any pleader shall be guilty of disrespect to the court, in open court, the court is empowered to impose a fine upon him, not exceeding the sum of one hundred rupees." § 15. "*First.* Whenever a sudder ameen may find it necessary to impose any fine on a pleader attached to his court, he shall report the circumstances of the case to the judge, who will either confirm and enforce, or modify or remit the fine, as may appear to him reasonable and proper. *Second.* All orders imposing fines on pleaders, which may be passed by the judges or registers of the zillah and city courts, in conformity with this regulation, shall be final; and the amount of the fines shall be levied either by a deduction from the fees, which may become due to the offender, or by the process which is prescribed for the execution of decrees. Provided however, that if a zillah or city judge shall in any particular instance see reason to believe, that a fine has been imposed by a register on insufficient grounds, or that the amount of such fine is disproportionate to the offence, it shall be competent to the zillah or city judge to remit or modify the fine at his discretion, and the order of the zillah or city judge, in such cases, shall be conclusive." § 16. "The vakeels attached to one court, are not to be allowed to plead in any other court; but this rule is not intended to preclude the zillah and city judges from making such an allotment and distribution of the pleaders attached to their courts, as may from time to time appear convenient on a consideration of the civil business in their own courts, and in those of their registers and of the sudder ameens. The judges of the sudder dewanny adawlut and provincial courts will also of course be at liberty to make any distribution of the vakeels attached to their respective courts, which may be found convenient for the dispatch of business in sittings which may be held before the separate judges of those courts." § 17. "The authorized pleaders of the zillah and city courts are hereby prohibited, without obtaining the previous sanction of the judges of those courts, from officiating as agents, or mokhtars, in any prosecution, trial, or proceeding before the magistrates, or their assistants. This prohibition however is not intended to apply to the cases of pleaders, who may be employed on the part of Government in conducting the prosecution of persons charged with criminal offences, or in the execution of any other duties in the criminal department, which such pleaders may be directed or authorized to perform on the part of Government, under the regulations which are now or may hereafter be in force." § 18. "*First.* Whenever a vakeel attached to a zillah or city court may die, or may be removed from his office, or may voluntarily resign his situation, the judge of such zillah or city shall notify the same in a publication, to be affixed in his own cutcherry, and in the cutcherries of the register, sudder ameens, and the collector of the district. The publication shall contain a statement of the several depending cases, in which such vakeel may have been employed, and a requisition to the parties who have retained such vakeel to attend in person, or to substitute another vakeel in room of the pleader formerly appointed by them, within a reasonable period, to be fixed by the court, not being less than six weeks. In such instances, instead of filing a new vakalutnamah, it shall be sufficient for the party or his mokhtar, duly authorized, to endorse on the back of the original vakalutnamah a written declaration, that he has appointed some other vakeel of the court, in lieu of the pleader, who may have died or resigned his office, or have been removed from his situation. *Second.* A publication issued in conformity with the preceding rules shall be held and considered to be a good and sufficient notice, and if any party shall not attend or appoint another vakeel, within the period limited in the publication, he shall be required to show cause for the omission,

and if sufficient cause be not assigned, the court shall proceed as in case of default, in conformity with the provisions in force. *Third.* A similar notification shall be issued on the death, resignation, or removal of any pleader attached to the provincial courts, or to the sudder dewanny adawlut. If the pleader shall have been attached to a provincial court, the publication shall be affixed in the cutcherry of such provincial court, and of the sudder dewanny adawlut, and in the cutcherries of the several zillah and city courts, included in the division, and the period to be allowed for parties to appear and to substitute another vakeel shall not be less than two months; if the pleader shall have been attached to the sudder dewanny adawlut, the publication shall be affixed in that court, and in such of the provincial courts, and of the zillah and city courts, in which it may appear necessary to publish the same, with reference to the depending causes in which the vakeel may have been employed; and the period to be allowed to parties to appear and substitute another vakeel, shall not be less than three months. *Fourth.* The courts are authorized to apply the principle of the preceding rules to cases, in which the decision of suits may be materially delayed by the protracted indisposition of a pleader, or by his continued inability to attend the court from any other cause which may be expected to be permanent, or of considerable duration. *Fifth.* Whenever a pleader originally entertained by a party may have commenced the pleadings and prosecution, or defence of a suit, and from any cause, not originating in the misconduct of such pleader, another pleader shall be employed in his stead; it shall be competent to the court, in which the suit is decided or terminated, to adjudge to the pleader so employed at the commencement of the suit (or if he be dead, to his heirs or legal representatives) such part of the established fee, as may appear to be an equitable remuneration for the trouble which he may have undergone." § 19. "The courts of civil judicature are hereby empowered to permit any of the authorized vakeels of their respective courts to be arbitrators in depending suits, subject to the several rules and provisions in force for referring suits to arbitration." § 20. "*First.* The authorized vakeels of the sudder dewanny adawlut, of the provincial courts, and of the zillah and city courts, are hereby empowered to receive fees for legal opinions, under the provisions contained in the following clauses of this section. *Second.* Any person, who may be desirous of obtaining the opinion of an authorized pleader regarding the legal validity and sufficiency of any claim, right, or title, which he may suppose himself to possess, and on the consequent expediency of prosecuting or defending, either originally or in appeal, such supposed claim, right, or title, in the courts of civil judicature, may submit a written statement of his claim under his seal, signature, or mark, to the pleader, whose opinion he may wish to obtain. *Third.* The pleader, to whom such statement may be submitted, after an attentive consideration of the laws, regulations, usages, or precedents, which may be applicable to the case, and of the arguments and proofs which may be adduced in support of the claim, shall furnish to the party, under his signature, a written declaration of his opinion, and of the grounds upon which that opinion may be formed. *Fourth.* If the pleader, who may have furnished such written opinion, shall be attached to the court of sudder dewanny adawlut, he shall be entitled to a fee of twenty-four rupees. If he shall be attached to any of the provincial courts, he shall be entitled to a fee of sixteen rupees. If he shall be attached to a zillah or city court, he shall be entitled to a fee of eight rupees. *Fifth.* Provided however, that it shall not be lawful for any pleader, who may have received a vakalutnamah in any suit instituted in a court of civil judicature, to receive the fee above prescribed on account of any legal opinion, which he may subsequently furnish to his con-

Publication to be issued on the death, resignation, or removal, of a pleader in the provincial courts, or in the sudder dewanny adawlut.

Similar publication may be issued in other cases

Court empowered to adjudge a reasonable portion of the fee to a pleader who may have been removed from the management of a cause without any fault on his part.

Section 19. Pleadars may be employed as arbitrators.

Section 20. Pleadars may receive fees for legal opinions.

A written statement of the case to be submitted to the pleader.

The pleader to give a written declaration of his opinion.

Rates of fees to be allowed in such cases

But pleaders who may have accepted a vakalutnamah in the case not authorized to receive such fee.



Pleadable liable to penalties for wilfully furnishing a dishonest opinion.

Section 21. Retaining fee abolished. Rules for the execution of a vakalutnamah.

Vakalutnamahs to be written on stamp paper, but not liable to the exhibit fee.

Section 22. Pleadable after accepting a vakalutnamah are prohibited from being employed in the same cause against the party who may have so retained them.

Section 23. Security formerly required for the payment of vakeel's fees no longer necessary. But the amount of the fees to be deposited in court.

Receipt to be granted for such deposit. And a register book of such deposits to be kept by the treasurer of the court. Receipts and register book to be drawn up according to prescribed forms.

stituent respecting any subject or question connected with such suit. *Sixth.* Any pleader who, under the preceding rules, may knowingly furnish an opinion of a nature evidently calculated to promote the institution of unfounded or litigious suits, or to discourage the amicable adjustment of dubious claims, shall be liable to be dismissed from his office; and if after furnishing such dishonest opinion he shall be employed as a pleader in the suit, his fees shall be liable to be forfeited by order of the court, either to Government or to the party whom he may have wilfully misled by such opinion."

§ 21. "*First.* When a party in a cause may be desirous of retaining a vakeel for the prosecution or defence of any civil suit, he shall not be required to pay to such vakeel the retaining fee of four annas, heretofore prescribed; but he shall execute to him a vakalutnamah, constituting him pleader in the cause, and authorizing him to prosecute or defend the suit, and further binding himself to abide by and to confirm all acts which such pleader may do or undertake in his behalf in the cause, in the same manner as if such party had been personally present and consenting; the party is to attest the instrument with his seal or signature, or with his mark if he cannot write, in the presence of two credible witnesses, who are likewise to attest it in the same manner; and who are to attend the court and prove the vakalutnamah in all cases in which it may be judged requisite. *Second.* Such vakalutnamahs are to be written on the stamp paper prescribed in Section 18, Regulation 1, 1814, but shall not be liable to the stamp duty on exhibits under Section 15, of that regulation." § 22. "When a vakeel to whom a vakalutnamah may have been executed under the preceding section, shall consent to undertake the prosecution or defence of the suit, he shall affix his signature to the back of the vakalutnamah, together with the date on which such signature may be affixed; and shall thenceforward be precluded from being employed in the same cause against the party who may have so retained him." § 23. "*First.* Whenever a pleader may have been duly appointed on the part of any plaintiff or appellant, in any regular or summary suit instituted in a zillah or city court, a provincial court, or in the sudder dewanny adawlut, such plaintiff or appellant, instead of furnishing security, as heretofore required; shall deposit in the court a sum equal to the amount of his pleader's fee; according to the rate prescribed in the following section as applicable to regular suits, and in Section 32, as applicable to summary suits; and until such deposit be made, no vakeel shall be allowed to do any act in the suit except in the case of paupers, or in other cases specially provided for by the regulations: a similar deposit shall likewise be required from defendants or respondents for the fees of the pleaders whom they may employ; and until such deposit be made, the vakeels shall not be allowed to plead or to perform any act in the suit on the part of their constituents, except in the special cases abovementioned. *Second.* A receipt on unstamped paper, duly attested by the treasurer of the court, shall be granted in each instance to the party making the deposit; and a duplicate receipt, similarly attested, shall be filed with the proceedings in the suit: an account of such deposits shall also be regularly entered into a register book to be kept by the treasurer of the court for that purpose. *Third.* The receipts shall be drawn up according to the form No. 3, and the register

*' Receipt to be granted for deposits, made on account of Vakeels' fees.*

"I, A. B. treasurer of the court of \_\_\_\_\_, do hereby acknowledge to have received this \_\_\_\_\_ day of \_\_\_\_\_, the sum of sicca rupees \_\_\_\_\_, being a deposit made by \_\_\_\_\_, on account of the fees, payable to his vakeel or vakeels in suit, No. \_\_\_\_\_, in which the value or amount, claimed by the plaintiff or appellant, amounts to sicca rupees ( \_\_\_\_\_ )."

book shall be prepared and kept according to the form No. 4,<sup>1</sup> of the appendix to this regulation." § 24. "The preceding rules are not intended to be applicable to the fees of vakeels, employed on the part of paupers; or in presenting to the courts miscellaneous petitions, or applications of the descriptions mentioned in Section 34, of this regulation. In such cases no previous deposit or security shall be demanded on account of the vakeel's fee, but the amount of the fee, which may be ultimately awarded by the court under Section 35, shall be levied in the manner prescribed for the execution of decrees, in all instances in which the interposition of the authority of the court may be requisite for the purpose of realizing such fee." § 25. "First. In all regular suits, which may be instituted, either originally or in appeal, subsequently to the 1st of February, 1815, in any of the zillah or city courts, the provincial courts, or the sudder dewanny adawlut, the vakeels employed by the respective parties are to be allowed, for pleading the causes of their clients, the rates of fees calculated as follows :

Section 24.  
In what cases the preceding rules are not applicable.

Section 25.  
Specification of the rates of fees payable to vakeels in regular suits.

In suits for money or effects, or for other personal property, or for land or other immovable property of any description, if the amount or value of the claim, estimated according to the provisions of Section 14, Regulation 1, 1814, shall not exceed 5,000 sicca rupees, five per cent."

If the amount or value shall exceed 5,000 rupees, and shall not exceed 20,000 sicca rupees, on 5,000 as above, and on the remainder, two per cent.

If the amount or value shall exceed 20,000 rupees, and shall not exceed 50,000 rupees, on 20,000 as above, and on the remainder, one per cent.

If the amount or value shall exceed 50,000 sicca rupees, and shall not exceed 80,000 sicca rupees, on 50,000 as above, and on the remainder eight annas per cent.

If the amount or value shall exceed 80,000 rupees, the fee to the vakeel shall be one thousand rupees, and shall in no instance exceed that sum, however great may be the value or amount of the suit in which such vakeel may be employed.

*Second.* In all the preceding calculations, where the amount or value may be in fractions of rupees, such fractions are to be rejected in calculating the fees thereupon. *Third.* The rules heretofore in force providing for a deduction of five per cent. from the amount of the fees payable to vakeels having been rescinded by Regulation 1, 1814, it is hereby declared, that the vakeels are to receive the full amount of their fees without any deduction whatsoever; provided nevertheless, that for every sum which may be paid to a vakeel by a civil court, on account of his fees, such vakeel shall give a receipt, written

Fractions of rupees to be rejected in the preceding calculations. Pre-scribed fees to be received without any deduction. But a receipt to be given for them on stamp paper.

<sup>1</sup> Register of Deposits on account of Vakeels' fees.

Number of the suit, and date of its institution.	Value or amount claimed.	Amount of deposit on account of the plaintiff or defendant, &c. &c.	By whom deposited, and for what vakeel or vakeels.	Date of the deposit, and of the receipt for it.	Date of the payment to the vakeel, and of his receipt.
No. 759, 25th July, 1815.	700 Rs.	Rupees 35, on account of Ramsing, appellant.	By Tarneechurn, Mokhtar of the appellant, for Meer-Syioo, vakeel.	10th of August, 1815.	

Section 26.  
Plead-er's fees  
how to be  
charged in the  
judgment.

Continuation  
of the same  
subject.

PROVINCIAL.

Section 27.  
All legal ex-  
penses and  
costs to be in-  
cluded in the  
decree; and to  
be charged to  
the parties in  
such mode as  
may appear  
equitable.

Section 28.  
Discretion  
vested in the  
courts to re-  
turn a portion  
of the plead-  
er's fee in cer-  
tain cases to  
the party who  
may have de-  
posited it.

Section 29.  
Plead-ers' fees  
to be paid on  
the determi-  
nation of the  
suit.

Section 30.  
Rules where  
two or more  
pleaders may  
be employed  
by the same  
party.

on the stamp paper prescribed in Section 11, Regulation 1, 1814.”

§ 26. “*First.* If the decree shall be given against the defendant or respondent, and the whole of the money or property, which may be demanded by the appellant or plaintiff shall be decreed to him, a sum equal to the whole of the fees of his pleader shall be adjudged to the plaintiff or appellant, in addition to the other costs which may be awarded to him; but if only a part of the money, or property claimed, is decreed to the plaintiff or appellant, a sum bearing the same proportion to the money, or to the value of the thing decreed, as the fee did to the demand stated in the plaint or appeal, is to be decreed and added to the costs, which may be awarded to the plaintiff or appellant. *Second.* If the suit of the plaintiff or appellant shall be dismissed, whether upon an investigation of the merits or otherwise, the plaintiff, or appellant, is to be charged with the fees of his own pleader and with those of the defendant or respondent. *Third.* Provided however, that if in any instance the payment of the pleaders’ fees, according to the preceding rules, should not appear to be just and equitable, the courts of civil judicature may exercise their discretion in charging the fees of the pleaders to the parties respectively, in such proportions as may appear equitable and proper, under a consideration of all the circumstances of the case.”

§ 27. “The courts of civil judicature are to insert in their decrees all sums paid or payable by the parties under the regulations, on account of fees or stamp duties, as well as on account of compensation for the expense of witnesses, and of subsistence money to peons employed in serving the processes of the courts, and of all other costs and expenses of the suit. Such costs and expenses shall be ultimately charged to the parties cast, or to the parties respectively, in such proportions as the court may deem equitable.”

§ 28. “When a suit, in which one of the parties may have been admitted to plead as a pauper, may be decided with costs in favor of the adverse party, and such pauper cannot make good the full amount of the costs awarded against him, the courts are authorized to return to such adverse party any portion of the fee, deposited by him on account of his vakeel, which may be deemed expedient, and to pay the remaining portion of the fee to the vakeel entitled to receive it: in exercising this discretion, the courts will be careful that the vakeel receive such a portion of the deposit as may in each instance appear to be a reasonable remuneration for the duty performed by him. The courts shall further endeavour to realize the remainder of the fee due to such vakeel, from any property which may subsequently be found to belong to the pauper.”

§ 29. “Upon a decision being passed by the court, whether upon an investigation of the case or otherwise, the fees of the pleaders, deposited in the court, shall be paid to the persons respectively entitled to receive them; and such payment shall not be stayed or postponed, in consequence of an appeal being preferred from the decision.”

§ 30. “*First.* The parties in a suit are respectively permitted to entertain two or more pleaders, who shall either divide the authorized fee between them, in an equal, or in any other proportion, which may have been previously agreed upon, between them and their constituent; or shall each be entitled to receive the full established fee, as may be specified in the vakalutnamah; but all stipulations to this effect shall be distinctly stated in the vakalutnamah, which shall otherwise be construed to entitle the whole of the vakeels appointed by it to an equal division of the

<sup>1</sup> This rule is modified by Section 10, of Regulation 19, 1817, as follows:—  
“When the aggregate amount of fees payable to a vakeel, in two or more suits, may not exceed sixteen rupees, he shall be allowed to give a consolidated receipt for the total amount, specifying the sum receivable in each suit; instead of a separate receipt for the fee payable in each suit.”

established fee and no more.\* *Second.* It shall be sufficient in such cases for the party, employing two or more vakeels in the same suit, to file a single vakalutnamah; but the party shall be required to deposit in court the whole amount of the fees payable to his pleaders, under the rules contained in Section 23. *Third.* If the party shall agree to pay to each of the vakeels employed by him the full amount of the authorized fee, the opposite party in the suit shall in no case be required to make good more than the fee of one of those pleaders, or such part of that fee as may be adjudged against him by the court. The fees of the other pleader are to be considered as a separate expense, to be defrayed exclusively by the party entertaining him, and for which he is not to be reimbursed in any case whatever." § 31. "*First.* If a suit shall be withdrawn, or dismissed on default, without a determination upon the merits of the case, before all the requisite pleadings shall have been filed in court, the respective pleaders of the plaintiff and defendants, or of the appellant and respondent, shall each be entitled to only one-fourth of the established fee which they would have received, had the suit been brought to a regular decision by the court. If a suit shall be withdrawn, or dismissed on default, after all the requisite pleadings shall have been filed in court, the respective pleaders are to be entitled to one-half the fees which they would have received, if judgment had been given in the cause. The fees in both of the abovementioned cases are to be charged to the plaintiff or appellant withdrawing the suit, or suffering it to be dismissed on default, together with all the admitted costs incurred by the defendant or respondent. *Second.* The same rule shall be considered applicable to cases adjusted by razeenamah, except that the fees of the pleaders and all other costs of the suit shall be paid by the parties in such manner and proportions as may have been agreed upon and inserted in the razeenamah." § 32. "The vakeels, who may be employed by the respective parties in summary suits and summary appeals for the recovery of arrears of rent or revenue, or for recovering the possession of land, and generally in all other suits and appeals, in which a summary process is authorized by the regulations, are to be allowed for pleading such summary suits, a fee equal to one fourth of the fee, which they would have received, had such suits been instituted as regular and not as summary suits." § 33. "The fees, which may be payable under the foregoing section shall be deposited in court, and paid to the vakeels entitled to receive them, in the same manner as is prescribed in regular suits under the preceding rules of this regulation." § 34. "The pleaders in the several courts of civil justice are permitted to demand, and receive, a fee of four annas for each miscellaneous petition or application which they may present, or motion which they

In such cases one vakalutnamah only is requisite.

When two or more pleaders may be employed, the adverse party shall in no case pay more than the prescribed fee for one pleader.

Section 31. Rules for the payment of vakeels' fees when the suit may be withdrawn or dismissed without an investigation of the merits of the case.

Rules applicable to the fees of pleaders, in suits adjusted by razeenamah.

Section 32. Pleadings employed in summary suits to receive only one fourth of the fee prescribed in regular suits.

Section 33. Such fees to be deposited in court, as in regular suits. Section 34. Pleadings to receive a fee of four annas for

\* Sections 32 and 33, here cited, have been rescinded by the first clause of Section 9, Regulation 19, 1817; and it is directed in the second clause of that section, that "the rule prescribed in the eleventh clause of Section 3, Regulation 26, 1814, (quoted at length under the head of *Summary Appeals*) relative to the fee receivable by pleaders employed in the summary appeals referred to in that section, shall be hereafter considered applicable to all summary appeals and original summary suits, authorized by the regulations, in which a pleader or pleaders may be employed." It is further directed in the third clause of Section 9, Regulation 19, 1817, that "it shall not be requisite to make any deposit, in the first instance, for the fees of pleaders employed in summary original suits, or appeals. But whatever amount of fees may be awarded to pleaders, on the decision of the case, shall be paid into the court giving judgment for the same, by the party or parties declared responsible for the payment thereof, within such period as may be limited by the court for that purpose; under penalty, for default, of being compelled to make good, by the usual process of recovery, any additional sum, which the court, in consideration of the delay, may judge it proper to award to the pleaders entitled thereto in such cases."

presenting miscellaneous petitions and applications. Unless such applications may be connected with a suit, in which the pleader is or may have been employed.

Section 35.  
Mode in which such fee is to be paid.

Provisions for the payment of a higher fee, in cases on which it may appear to be equitable.

Section 36.  
Pleaders to give written receipts for documents entrusted to them by their clients.

Section 37.  
Rules for the appointment of pleaders on the part of Government.

The death or removal of a pleader on the part of Government, as well as the nomination of a successor, to be reported to the secretary to Government in the judicial department.

may make, in writing to the court, provided that such petition, application, or motion, shall not relate to any suit depending before the court, wherein the person on whose behalf they may present such petition, or application, or make such motion, may be a party; but all petitions, applications, or motions presented or made to any of the courts on behalf of parties in a suit, on which the fees prescribed by Sections 25 and 32 may have been paid, or may be payable, are to be considered as paid for, by the fee allowed to the pleaders in the abovementioned sections; and the pleaders are to make all such motions and do all such acts as may be requisite relative to any suit, in which they may have been entertained, not only during the trial of such suit, but after a decision shall have been passed, until the final judgment shall have been enforced." § 35. "The fee of four annas for miscellaneous petitions and motions, prescribed in the above section, is not required to be deposited in the court, but is to be paid by the party himself to the vakeel, at such time as may be mutually agreed upon; but as cases may occur, in which the above fee of four annas may not be a sufficient compensation to the pleader or pleaders, the several courts of civil justice are authorized to award such additional fee, in any instance, as they may consider a reasonable compensation to the pleader for the duty performed by him, and to cause payment thereof to be made either by the party, who may have employed such pleader or pleaders, or as costs of suit by the opposite party, as may be deemed just and proper; provided however, that the compensation, which may be awarded in such cases, shall in no instance exceed one fourth of the established fee to which the pleader or pleaders would have been entitled on a regular suit in the case in question." § 36. "Pleaders are to give written receipts on unstamped paper for all accounts, writings, or documents, which may be delivered to them by their clients in the course of any suit, or process; if a pleader shall refuse to return such accounts, documents, or writings, the court upon a petition being presented to them for that purpose by the owners of the papers so withheld, shall cause them to be restored." § 37. "*First.* One or more of the authorized pleaders of the sudder dewanny adawlut, of the provincial courts, and the zillah and city courts, shall be appointed for the purpose of conducting the prosecution or defence of any suits in those courts respectively, which may be directed to be carried on at the public expense, by any regulation or by a special order from the Governor General in Council, or other authority competent to pass such order. Those pleaders shall be furnished with a sunnud or written authority to that purport, in the English and Persian languages, under the signature of the secretary to Government in the judicial department, and the sunnud shall be drawn up according to the form No. 5, of the appendix to this regulation." *Second.* The several courts of justice shall report to the secretary to Government in the judicial department, the death, resignation, or removal of any of the vakeels of Government attached to their respective courts; and shall at the same time nominate for the approbation of Government, a proper person, being one of the authorized vakeels of the court, to succeed to the vacant office. The courts shall in all instances select from amongst the established pleaders such individual as may appear best qualified for the situation by his character and

<sup>1</sup> *Sunnud to be granted to the Pleaders of Government in the English and Persian languages.*

"In conformity with the provisions of Regulation 27, 1814, you, A. B. are hereby appointed to the office of pleader on the part of Government, in the sudder dewanny adawlut, or in the provincial court for the division of \_\_\_\_\_, or in the zillah or city court of \_\_\_\_\_. You will not be liable to be removed from your office so long as you may conduct yourself with propriety, and discharge your duty with zeal, ability, and integrity, under the regulations which are now in force, or which may hereafter be enacted."

capacity.' *Third.* The pleaders for Government are to undertake all causes which they may be directed to plead by orders from Government, or which may be directed by any regulation, to be carried on at the public expense, upon receiving an order for that purpose, either from Government, or from any officer or officers empowered by any regulation to superintend, and to furnish instructions for conducting such suits. The order of Government, or of such officer or officers, is to be filed in court as the authority of the pleader to plead the cause, and is to form part of the record of the proceedings. *Fourth.* The pleaders of Government are prohibited from giving any advice to the parties opposed to Government in any civil suit or proceeding, and from being concerned directly or indirectly on their behalf, in suits which are directed to be carried on at the public expense; but in all other suits the pleaders of Government are to be at liberty to plead for either of the parties in the same manner as the other authorized pleaders of the court. *Fifth.* The pleaders for Government are to be paid the same fees in causes directed to be pleaded at the public expense, as pleaders employed in causes between individuals, and under the same rules and restrictions; provided however, that the previous deposit, prescribed in Section 23, of this regulation, shall not be required for the fees payable to the pleaders of Government, in the prosecution or defence of suits conducted at the public expense. *Sixth.* In pleading suits directed to be carried on at the public expense, the pleaders for Government are to be subject to all the rules prescribed for their guidance when pleading on behalf of individuals, except in matters or cases in which it may be otherwise specially directed by any regulation. *Seventh.* The Board of Revenue, the Board of Commissioners in the upper provinces, the Board of Trade, or any other authorities, entrusted with the management of suits on the part of Government, are empowered to associate with the established vakeel of Government, any other authorized pleader, in cases in which such aid may, from the importance of the suit, or any other reason, be judged necessary or advisable. Such additional pleader shall be furnished with a vakalutnamah, duly authenticated by the officer or authority employing him, and shall be entitled to receive the same fees, and under the same rules and restrictions, as if he were employed on the part of an individual, subject however to the provision contained in clause fifth of this section." § 38. "No part of this regulation is to be construed to prohibit or to prevent any individual from appearing and pleading his own cause in person, in any of the courts of civil judicature, without employing an authorized pleader." § 39. "*First.* The provisions of this regulation are not intended to apply to vakeels, who may be employed in the courts of the moonsiffs, under Regulation 23, 1814. *Second.* It is hereby further declared, that the provisions of this regulation are to be construed with reference to Sections 7, 10, and 15, of Regulation 28, 1814, in suits where one or both of the parties may be permitted to plead in formâ pauperis, in conformity with the rules contained in that regulation." § 40. "That the pleaders in the several courts, as well as all other persons, may have it in their power to render themselves acquainted with the regulations enacted by the British Government, there shall be kept,

Duties to be performed by pleaders on the part of Government.

Such pleader prohibited from advising parties opposed to Government.

What fees they are entitled to receive.

To be guided by the same rules as pleaders in other suits.

Another pleader may be associated with the pleader of Government in carrying on suits at the public expense.

Section 38. Individuals not prohibited from pleading their own suits.

Section 39. This regulation not applicable to pleaders in moonsiff's courts, and in pauper suits is to be construed with reference to the provisions of Section 7, 10, and 15, Reg. 28, 1814. Section 10. The regulations are to be

<sup>1</sup> In modification of the rule contained in this clause, it is provided by the second and third clauses of Section 7, Regulation 8, 1816, that "on the occasion of vacancies occurring in the office of the vakeels of Government, in the courts of justice, such courts shall not nominate any individual to succeed to the office; but shall merely report the circumstance, for the information of Government, to the secretary in the judicial department. It will rest with Government to ascertain, by such enquiries as they may deem necessary, which of the constituted pleaders of the court is best fitted, by his qualifications and character, to succeed to the vacant office; and to appoint such individual accordingly."

exposed for the public inspection, and the pleaders are required to make extracts from them.

for public inspection, in the several courts of judicature, printed copies of all such regulations and of the translations in the native languages, bound up with the annual indexes. Until the regulations, which may be passed in each year are so bound up, the separate copies of each regulation, with the translations, which may be printed and circulated to the courts, are to be exposed as above directed. The regulations are to be deposited upon a table expressly allotted for that purpose in some part of the court-room, and to lie for public inspection every day, Sunday excepted, during the ordinary hours of business, when the pleaders of the courts, and all other persons, are to be at liberty to refer to the regulations, or to take copies or extracts from them in the court-room: on receipt of the translations of the regulations in the country languages, the several courts of civil justice shall cause the same to be publicly read in their cutcherries, and shall require the native pleaders of their respective courts to take copies of any of those translations, which relate directly or indirectly to the administration of civil justice."

Remarks upon the preceding rules, and the result of their operation.

Means of rendering the appointment and control of established pleaders productive of the

If all the advantages expected from an establishment of authorized pleaders, under the rules above stated, have not been yet obtained; it must be ascribed more to neglect on the part of the vakeels appointed, to qualify themselves for their situations, and for the due performance of the duty required from them; than to any defect in the regulations, the liberal compensation allowed by which is sufficient to render the office of a native pleader respectable and desirable.' It may be hoped therefore that as the prejudices, which formerly existed against the profession of a vakeel, cease to exclude men of education and character from engaging in it; as the courts are enabled to select men of that description, in conformity with the regulations, for filling all vacancies that may occur; and as the persons appointed to act as pleaders become, by

' As materially connected with this object, the following copy of a circular letter from the register of the sudder dewanny adawlut, to the provincial courts of appeal, written by order of Government, on the 2d September, 1802, is here inserted; in the hope that a general observance of the rule contained in it may promote conciliation; and obviate unnecessary humiliation, where it is impossible to suppose an intention of insult; or a want of that respect to Europeans, particularly to the officers of Government, which is shown so manifestly and universally, in every other mode; consistently with the established usages of the country.

"An instance has lately occurred, in which an English gentleman, filling an office under a court of justice, refused to admit the vakeels and native officers of the court to appear before him with their slippers on, according to usage, for the purpose of transacting public business.

"It became necessary in consequence to refer to His Excellency the Most Noble the Governor General in Council the question of the propriety of maintaining the practice thus objected to; and the court of sudder dewanny adawlut, to a report of the practice hitherto observed in that court, added their opinion that it is not, in any wise, derogatory to the dignity of a court of justice, nor disrespectful towards any of its officers, to allow natives of India, *as heretofore*, to appear before them with slippers, in apartments where floors are not prepared for sitting on, in the manner observed within the houses of natives themselves.

"His Excellency in Council has been pleased to express his entire concurrence in this opinion, and has judged it proper to direct, that natives shall not be prevented from wearing their slippers, at any place, or upon any occasion, where by custom, already established, it has been usual to admit them with their slippers.

"To guard against any recurrence of opposition to the practice, and prevent the dissatisfaction which must ever arise from the ill-judged and impolitic prohibition of any general and long established usage, His Excellency in Council has been further pleased to direct, that his orders be circulated to the courts of justice for their information and guidance. The sudder dewanny adawlut have accordingly directed me to communicate the same to your court; and to desire that you will extend the communication to the several courts within your division."

experience, (aided by the attention and direction of the courts in which they are employed) better acquainted with the laws and regulations, and with the proper forms of pleading under them; the appointment and control of a regular establishment of pleaders will be productive of the full benefit intended by it. In the words of the preamble to Regulation 7, 1793, "the advantages of the pleaders will then be proportionate to their zeal, abilities, and integrity; at the same time that their exertions to acquire reputation and emolument will necessarily conduce to the improvement of the judicial system. By the erection of tribunals, constituted upon the principles of the courts of justice established under the regulations, and confining the pleading of suits to persons possessing the qualifications, and acting under the rules prescribed, individuals will be satisfied that personal solicitation and intrigue are not requisite, either to obtain their own rights, or to defend themselves from oppression, or the unjust claims of others. They will feel that they have an impartial, and al! powerful protector in the laws; and that through the means of the public pleaders, they can at all times command the exercise of the judicial powers of Government lodged in the courts, for the redress of any injuries which they may sustain, either in their persons or property."<sup>1</sup>

benefit intended by Government.

<sup>1</sup> The sentiments of the court of sudder dewanny adawlut on the practical result of the rules framed in 1793, with a view to the gradual supply of the civil courts with an auxiliary bar of well-informed, able, and upright, native advocates, well versed in the laws and regulations of the country, were communicated in a letter to the Vice-President in Council, under date the 9th March, 1818, from which the following is an extract:—"It must be admitted that the establishment of authorized pleaders, which was instituted in the lower provinces by Regulation 7, 1793, has not yet fulfilled the whole of the beneficial purposes intended by it, as set forth in the preamble to that regulation. It has not been found possible to make the selection in all cases, or in general, from "men of character and education, versed in the Mahomedan or Hindoo law, and in the regulations passed by the British Government." Nor, as far as we are able to judge from our own observation, have the diligent endeavours of many of the persons appointed, to qualify themselves for their situations, and do justice to their employers, been such as might reasonably have been expected. Still however, we are of opinion that much facility is given to the administration of civil justice by their constant attendance: and that the practical knowledge, which some of them have obtained of the laws and regulations, is not without its use, as well to the judicial officers, as to the parties in suits. That instances of abuse and misconduct have occurred amongst them, cannot be denied; but we have no reason to suppose such instances frequent; or that, on a general view of the advantages and disadvantages arising from the employment of licensed pleaders, as now regulated, there is any sufficient reason for discontinuing them. On the contrary, we should consider the loss of them a material detriment to the established system of civil judicature; and should apprehend a recurrence of the many serious evils, which preceded their institution, as enumerated in the preamble to the regulation already mentioned."



*Judicial Fees; and Exemption of Paupers.*

R. 38, 1795, extended to Benares by R. 60, 1795; and re-enacted, with amendments, for ceded provinces in Reg. 43, 1801. Reasons for re-establishing a fee on the institution of civil suits; which was discontinued in 1793.

Also, a fee upon exhibits; and summonses for witnesses.

Original rates subsequently altered.

And all former rules on the subject rescinded by R. 1, 1811, § 2.

Stamp duties now levied, in lieu of fees above mentioned, under provisions of R. 1, and R. 26, 1814.

Rules contained in R. 28, 1814, for admitting certain persons to sue as paupers, Section 3.

No pauper suits to be admitted in which the value of the thing claimed shall not exceed 64 Rs.

Section 4. Persons preferring claims of certain descriptions not to be admitted to sue as paupers.

Section 5. Parties desiring to sue as paupers are to present a petition on stamp paper in person. Proviso.

On the introduction of the new judicial system in 1793, a fee which had before been levied upon the institution of suits in the civil courts, varying from five to two per cent. in proportion to the cause of action, was abolished; and that every possible relief might be given to suitors, who should be compelled to have recourse to judicial process, for the recovery of their rights, no expense whatever, beyond the fee of the pleaders whom they might chuse to entertain, and the actual charge incurred in summoning their own witnesses, was annexed to the prosecution of any civil suit, or appeal. But experience having shown that many groundless and litigious suits were instituted, in consequence of this remission of the fee before levied; and that many superfluous exhibits were filed, from their not being subject to any charge; whereby, as well as by summoning a number of unnecessary witnesses, the business of the courts was much increased; and the decision of causes materially delayed; it was enacted by Regulation 38, 1795, that an institution fee should be again paid upon suits, which might be thenceforth filed in the several courts of civil judicature; or which were then depending, and might not be withdrawn. Also, that a small fee should be levied on all exhibits filed in future in the civil courts; and upon all summonses or orders for the attendance and examination of witnesses. The rates of fees first established on these accounts were afterwards altered and raised by Regulation 6, 1797, and by Regulation 43, 1803, for the ceded provinces: but these and other regulations on the subject were rescinded by Section 2, of Regulation 1, 1814, "for raising a revenue by means of stamps;" and stamp duties are now established, under that regulation, and Regulation 26, 1814, to be paid on the institution of civil actions, viz. on the petitions of plaint required to be on stamp paper, as well as upon applications for the admission of exhibits, and attendance of witnesses, in the civil courts; as stated in detail, under the head of *Stamp Duties*, in the third volume of this Analysis. The stamp paper to be used for judicial pleadings, and for miscellaneous petitions and applications, presented to the different authorities in the judicial department, are likewise specified, at length, under the same head. It will therefore be sufficient to add, in this place, the following rules contained in Regulation 28, 1814, "for reducing into one regulation, with amendments and modifications, the several rules which have been passed for admitting persons of certain descriptions to sue in the courts of civil judicature as paupers."

§ 3. "No person shall be hereafter entitled to institute or defend any suit in formâ pauperis in any civil court of judicature, unless the amount or value of the thing claimed shall exceed the sum of sixty-four rupees; under this rule the moonsiffs are hereby strictly prohibited from receiving or trying any suits which persons may wish to prefer to them in formâ pauperis." § 4. "No person shall be hereafter permitted to institute a suit as a pauper in any civil court of judicature, if the claim shall be for damages on account of loss of cast, slander, abusive language, assaults, or personal injuries of any description; or if the claim shall be for the possession or recovery of deeds or papers, or for fines, forfeitures, or pecuniary penalties, on account of any breach of the regulations." § 5. "First. Whenever a party may be desirous of instituting an original suit as a pauper in any zillah or city court, or in a provincial court, he shall appear in person before such court, and shall present a petition written on the stamp paper prescribed for miscellaneous petitions in Section 18, Regulation 1, 1814; provided however, that if the party be a

female of a rank and description which according to the prejudices of the country would render it improper to require her personal attendance in a court of justice, such petition may be presented by a mokhtar or agent duly authorized for that purpose. *Second.* The petition shall contain a general statement of the nature and grounds of the demand, of the value of the thing claimed, according to the provisions of Section 14, Regulation 1, 1814, of the name of the person or persons intended to be sued, and a schedule of the whole real or personal property, belonging to the petitioner, with the estimated value of such property. *Third.* The court in which such petition may be presented, or an authorized officer of the court, shall then proceed to take the examination of the petitioner, or if the petitioner be a female of the description mentioned in clause first of this section, the examination of her agent, with regard to the points above noticed, and shall question him particularly with respect to any real or personal property, which the petitioner may have recently sold, mortgaged, transferred, or otherwise disposed of; such examination shall be taken on oath, unless the court should in any particular instance, judge it proper to admit a solemn declaration in lieu thereof, under the provisions now in force, or any other provisions which may be hereafter enacted. *Fourth.* In taking the examination of the petitioner or agent in such cases, it shall be the duty of the court to admonish him, that any wilful misrepresentation or falsehood, or the fraudulent concealment of any material fact regarding the property in the petitioner's possession, or the recent transfer of such property, will subject him to be tried for perjury, and on conviction, to the punishment which is now or may be hereafter prescribed for that crime by the regulations. The petitioner or agent shall subscribe his examination, which shall then be authenticated by the court in the usual manner. *Fifth.* If upon such examination it should appear to the court that the petitioner is possessed of property sufficient to defray the expenses of the suit, or that he has recently sold, mortgaged, or otherwise transferred any property with the view of being admitted to sue as a pauper, the court will at once refuse to admit his suit in that form, and will refer him to the general rules in force. *Sixth.* If there shall appear any grounds for suspecting that the petitioner is possessed of property, or has recently transferred any property beyond that which he may have acknowledged or stated in his petition and examination, the court may issue a notice to the adverse party, signifying, that if such party shall appear within a reasonable period, to be fixed by the court, he shall be permitted to show cause why the plaintiff should not be allowed to sue as a pauper; the court may also summon witnesses or institute a local inquiry in the neighbourhood of the petitioner's residence, with the view of ascertaining whether the petitioner has recently transferred, or is possessed of any property beyond that stated in his examination. *Seventh.* If from the result of such enquiry, or at any subsequent period, it should be satisfactorily established, that the petitioner, or the agent of a female petitioner, has been guilty of wilful perjury in his examination, the court will not only refuse the prayer of the petitioner (or nonsuit the plaintiff if the cause be depending,) but will cause the person appearing to have been guilty of perjury to be committed to the court of circuit to take his trial for such offence." § 6. "*First.* If none of the objections stated in clauses fifth and seventh, of the preceding section, should exist, and the petitioner should not appear to be possessed of sufficient property to enable him to defray the probable expenses of the suit, the court is empowered to admit him to sue as a pauper, on his finding two good and sufficient sureties, both of whom shall be householders, for his appearance whenever his attendance may be required by the court. *Second.* The suits of pauper plaintiffs which may be hereafter instituted in the zillah or city courts, shall be tried by the judge or register, and

What the petition is to contain

Petitioner's examination to be taken on oath, with certain exceptions

Court to admonish the petitioner in taking his examination.

Court when to reject the prayer of the petitioner

Courts how to proceed when they may be desirous of ascertaining the amount of the petitioner's property

When the petitioner shall have been guilty of perjury he shall be committed to the court circuit.

Section 6  
A party admitted to sue as a pauper shall find two sureties for his appearance.  
Pauper suits not to be referred to the sadder means

Section 7.  
The courts are authorized in certain cases to direct one of the pleaders to undertake the suit. Reasons for exercising that power to be recorded.

Section 8.  
Stamp duties and other expenses to be remitted to paupers ; pleadings on their part and copy of the decree to be on unstamped paper.

Section 9.  
All costs and expenses to which the plaintiff would have been liable had he not been admitted to sue as a pauper to be inserted in the decree.

Section 10.  
The fees of the pauper's pleader when to be paid by the defendant. If the claim be dismissed the defendant is to pay to his own pleader such adequate compensation as the court may direct.

Section 11.  
Pauper plaintiffs under certain circumstances liable to a sentence of six months imprisonment. Execution of such sentence not to be suspended on account of an appeal being preferred from the decision. Provision. Sureties failing to produce a pauper plaintiff liable to six months imprisonment.

Court to realize the costs due from paupers notwithstanding their imprisonment or the imprisonment of their sureties.

shall not be referred to any of the sudder ameen's." § 7. "*First.* When the required sureties shall have been furnished, if the pauper shall be unable to prevail on any of the vakeels of the court to undertake his suit, and he shall be unable to plead the cause in person, the court may require any of the authorized pleaders of the court to undertake and plead the suit, and no deposit shall be required from the plaintiff for the fees of such pleader. *Second.* The courts are to state, on the record of the trial, their reasons for every exercise of the power vested in them by this section ; and the order of the court in such cases shall be a sufficient warrant to the vakeel to plead in the suit without filing the usual vakalutnamah." § 8. "The stamp duty which has been substituted for the institution fee by Regulation 1, 1814, shall not be required from plaintiffs who may be admitted to sue as paupers under this regulation. The plaint, reply, or other pleadings on the part of the plaintiff, as well as applications on his part for receiving exhibits and summoning witnesses, may be written on unstamped paper. The notice to the defendant, the summons for witnesses, and other processes on the part of the plaintiff, shall be served through the chuprassies on the establishment of the courts, without any expense to the plaintiff ; and the copy of the decree, as well as copies of orders or proceedings which he may be required to take, shall be furnished to a pauper plaintiff on unstamped paper." § 9. "On the conclusion of the suit, the court shall calculate the whole of the costs which would have been incurred by the plaintiff on account of the several stamp duties prescribed by Regulation 1, 1814, and other legal expenses, had he not been permitted to sue as a pauper, and shall charge the same in the decree to the party cast, or to the parties respectively, in such proportions as may be deemed equitable." § 10. "*First.* If the pauper plaintiff shall gain his suit, the court will cause the defendant to make good the amount of the fees due to the pleader, who may have been employed on account of the plaintiff, or such part of them as the court may decree. *Second.* If the claim of the plaintiff be dismissed with costs, the court is authorized and required to levy from the defendant such part only of the established fee for his own pleader as may appear to be an adequate compensation, leaving the remainder to be recovered from any property that may subsequently be found to belong to the plaintiff." § 11. "*First.* If the plaintiff shall not establish his claim, and the court shall deem the suit to be unfounded, vexatious, or wilfully exaggerated, and the plaintiff shall not pay the amount of his own fees, and the fees and costs which may be awarded against him in favor of the opposite party, the court is authorized to commit him to close custody in the civil jail, without labor, for a period not exceeding six months. *Second.* Such order of confinement shall be carried into immediate execution, and shall not be suspended in consequence of the plaintiff's being desirous of appealing from the judgment ; provided however, that the plaintiff shall at any time be entitled to his discharge from such confinement on his paying into court the full amount of the costs and expenses awarded against him in the decree. *Third.* If the pauper plaintiff shall abscond, and his sureties shall not produce him before the court, and the order for his imprisonment cannot therefore be carried into effect, the said sureties shall be called upon to make good the full amount of the costs adjudged against the plaintiff. In the event of their refusing or failing to make good the costs, the court is authorized to commit them to close custody, without labor, in the civil jail, for a period not exceeding six months, subject to the provision contained in clause second of this section. *Fourth.* The confinement of a pauper plaintiff, or of his sureties, under this section, shall not preclude the court from realizing the costs and expenses adjudged against a pauper plaintiff : but in all cases in which such plaintiff may fail to make good the costs and expenses to which he may be declared liable in the decree,

whether those costs may be due to the defendant or to Government, the court shall endeavour to realize the amount by the sale of any property which may belong to the plaintiff, either at the time of the decree or subsequently thereto." § 12. "First. If any party to an original suit may be desirous of appealing in formâ pauperis from the decision passed in such suit, he shall present a petition in the mode prescribed by Clause first, Section 5, of this regulation, to the court by which his appeal may be regularly cognizable under the regulations. Second. Such petition shall be accompanied by an authenticated copy of the decree, and shall contain a schedule of the whole real or personal property belonging to the petitioner, and the estimated value of such property, together with a statement of the specific grounds on which the petitioner may desire to prefer an appeal. Third. If upon a perusal of the petition and the copy of the decree, the original judgment shall not appear to the court to be erroneous or unjust, or if the nature of the cause shall not appear to be of sufficient importance to merit a further investigation in appeal, the court will reject the petition, and will refuse to admit the petitioner to sue in appeal as a pauper. Fourth. Provided however, that the petitioner shall nevertheless be entitled to institute his appeal, on performing the conditions of appeal prescribed by the regulations for persons not suing as paupers." § 13. "If upon the perusal of a petition presented under the preceding section, and of the copy of the decree accompanying it, the court shall be of opinion that there is reason to believe the judgment to be erroneous or unjust, or that the nature of the cause renders it deserving of a further investigation in appeal, the court is empowered to admit the appeal subject to the rules and conditions prescribed in Sections 5 and 6, of this regulation. Sections 7, 8, 9, 10, and 11, shall also be considered applicable to persons who may be admitted to appeal in formâ pauperis." § 14. "If a decision be passed in any original suit in favor of a pauper plaintiff, and the adverse party shall appeal from such decision, the principles of the rules contained in Sections 7, 8, 9, and 10, shall, without any further enquiry, be considered applicable to the respondent, or original pauper plaintiff, in such appealed suit, provided that the execution of the original decree shall have been suspended during the appeal." § 15. "If a decision in favor of a pauper plaintiff be reversed in appeal, the amount of the stamp duty substituted for the institution fee which may have been paid by the appellant, shall be returned to him by the court, together with such portion of the deposit which may have been made by him on account of the fee payable to his vakeel, as may be deemed reasonable, and the amount of such stamp duty and deposit, as well as all other costs and expenses which may be awarded in the decree against the respondent, shall be recovered from any property which the respondent may, at any time, be found to possess." § 16. "First. If a defendant or respondent, in any suit (except in the case provided for by Section 14) shall be desirous of being admitted to plead in formâ pauperis, he shall appear either in person, or by an authorized agent, before the court, in which the suit may be depending, in conformity with the rules prescribed in clause first, of Section 5, of this regulation; and shall present a petition, containing an exact schedule of the whole real or personal property belonging to him, and the estimated value of such property. Second. The court to whom such petition may be presented, shall then proceed in conformity with clauses third, fourth, fifth, sixth, and seventh, of Section 5, of this regulation. Third. If after the examination and enquiries, prescribed in those clauses, the court shall be satisfied that the petitioner is not possessed of sufficient property to defray the probable expenses of the suit, and that he can neither plead the suit in person, nor prevail on any of the authorized pleaders of the court to undertake the defence of the suit, the court is empowered to grant to the

Section 12.  
Persons desirous of appealing as paupers to present a petition to the superior court With copy of the decree.  
What the petition is to contain.  
Court when to reject the petition.

Proviso.

Section 13  
In what cases the court may admit the petitioner to appeal as a pauper.  
Subject to what rules  
Section 14.  
Pauper plaintiffs who may have gained their suit to be admitted to respond in appeal as paupers.

Proviso.  
Section 15.  
Amount of the stamp duty paid on appeal to be returned to the appellant in certain cases.  
And recovered with other costs from the respondent's property.  
Section 16.  
Defendants or respondents wishing to plead as paupers to present a petition to the court.

Court how to proceed.

And in what cases authorized to comply with the prayer of the petition.

Section 17.  
This regulation is not applicable to summary suits, or to suits of paupers instituted before the 1st of January, 1815.  
Section 18.  
Copies of the proceedings and judgments of the sudder dewanny adawlut may in certain cases be written on unstampt paper.  
Section 19.  
Explanation that miscellaneous petitions and applications are to be written on the prescribed stamp paper.  
Proviso

petitioner the same advantages and facilities in the defence of the suit as are allowed to pauper plaintiffs and appellants, under Sections 7, 8, 9, and 10, of this regulation, and no security except for personal appearance, shall be required from such defendant or respondent." § 17. "It is hereby declared, that the rules contained in this regulation are intended to apply to regular suits and appeals only, and not to summary suits or summary appeals of any description; neither are they intended to apply to pauper suits which may have been instituted either originally, or in appeal, previously to the 1st of February, 1815; such pauper suits and appeals are to be tried and determined in conformity with the rules heretofore in force." § 18. "Copies of the proceedings and judgments of the sudder dewanny adawlut, in appeal to the King in Council, which are required to be written on stamp paper, of a prescribed value, by Section 19, Regulation 1, 1814, shall be furnished without expense to paupers, who may be parties in such appeals, and shall be written on unstampt paper of European manufacture." § 19. "Doubts having arisen whether the courts of civil and criminal judicature, the board of revenue, the board of commissioners, the collectors and other public officers, are authorized to receive from persons professing themselves to be paupers, any miscellaneous petitions, or applications, which are required to be written on stamp paper, or any other paper, than the prescribed stamp paper; it is hereby declared, that such petitions or applications shall not be received by any of the said authorities except on paper bearing the prescribed stamp. Provided however, that the courts of criminal judicature shall be at liberty to receive petitions on unstampt paper from prisoners, who may be confined under examination or sentence in any of the criminal jails."

### *Native Officers of the Courts of Judicature.*

Original rules for appointment of the law officers and native ministerial officers of the civil and criminal courts, contained in Reg. 12 and 13, 1793, and in Reg. 11 and 12, 1803, for the ceded provinces, altered by Regulations 5, 1804, and 8, 1809.  
Further rules, which are now in force.

Forms of oath prescribed by R. 12, 1793, §§, and R. 13, 1793, § 4; re-enacted for ceded provinces in R. 11, 1803, § 5; and R. 12, 1803, § 4.

The original rules "for the appointment of the Hindoo and Mahomedan law officers of the civil and criminal courts of judicature" contained in Regulation 12, 1793, (extended to Benares by Regulation 11, 1795, and re-enacted for the ceded provinces in Regulation 11, 1803) as well as the rules prescribed "for the ministerial officers of the civil and criminal courts" in Regulation 13, 1793, (extended to Benares by Regulation 12, 1795, and re-enacted for the ceded provinces in Regulation 12, 1803) were materially altered by Regulations 5, 1804, and 8, 1809, "for modifying the rules before in force respecting the appointment and removal of the native officers of Government, in the judicial, revenue, and commercial departments;" the provisions of which have been already detailed in the second volume of this Analysis.\* It will therefore be sufficient to state, in this place, such rules as are now in force, respecting the native officers of the courts of judicature, and are not included in the provisions of the two regulations last mentioned.

By the first clause of Section 5, Regulation 12, 1793, (corresponding with the first clause of Section 5, Regulation 11, 1803, for the ceded provinces) a form of oath was prescribed to be taken by the Mahomedan law officers of the courts of civil judicature, previously to entering on the execution of the duties of their respective offices; and by a further clause in the same section they were required to take and subscribe a retrospective oath, half-yearly.

\* An extension of the latter part of this rule, to petitions from prisoners in the jails of the civil courts, as provided for by Section 2, of Regulation 4, 1816, has been already cited, under the head of *Zillah and City Civil Courts*, page 65.

² Pages 153 and 155.

The serishtadars, or other head native officers, moonshees, mohurrers, and nazirs of the civil and criminal courts, were also directed, previously to entering upon the execution of the duties of their offices, to take the form of oath prescribed in Section 4, Regulation 13, 1793; corresponding with Section 4, Regulation 12, 1803, for the ceded provinces. But (as stated in the preamble to Regulation 18, 1817) "with a view to maintain the sanctity and obligation of an oath, by confining the requisition of it to cases in which an oath may be necessary for the validity of evidence, and due administration of justice," it was deemed expedient to modify the rules which prescribed an oath of office to be taken by any of the native officers of Government; and the following provisions were accordingly enacted in Regulation 18, 1817.

§ 2. "First. Such parts of the regulations in force as direct that the law officers, or ministerial native officers, of the courts of judicature, civil or criminal, or any other native officers employed in the judicial, revenue, or commercial department, or in any public office whatever, shall take and subscribe an oath, previously to their entering upon the discharge of the duties of the office to which they may be respectively appointed, or which, in like manner, prescribe an oath of office to be taken by the moonsiffs and sudder ameens, and by the native pleaders attached to the civil courts, are hereby declared subject to the following modification. Second. Instead of the prescribed oath, which is required by the regulations in force, the several native officers referred to in the above clause shall hereafter make and subscribe, in open court, or in the established public office, before the judges, boards, collectors, commercial residents and agents, or other European authorities, to which they may be respectively subject, a solemn declaration to the same effect with the form of oath heretofore prescribed, except that the word "declare" shall be substituted for "swear;" and that the declarer shall not be sworn thereto."

Reasons stated in preamble to R. 18, 1817, for modifying the above rules.

Section 2. Rules in force respecting a prescribed oath, to be taken by certain native officers, declared subject to modification.

A solemn declaration substituted for the prescribed oath in such cases.

The solemn declarations to be made and subscribed by the Mahomedan and Hindoo law officers, and by the ministerial native officers, of the civil and criminal courts, under the rule here stated, are as follows:—

#### No. 1.

*Form of declaration, prescribed for the cauzy and mufties of the sudder dewanny adawlut, and nizamat adawlut; the cauzy and mufty of the provincial courts of appeal and circuit; and the mufties of the zillah and city courts.*

"I, A. B. cauzy (or mufty) to the sudder dewanny adawlut, and nizamat adawlut; or to the provincial court of appeal and circuit for the division of \_\_\_\_\_, or the dewanny adawlut of the zillah or city of \_\_\_\_\_, solemnly declare, that I will truly and faithfully perform the duties of cauzy (or mufty) of this court, according to the best of my knowledge and ability; that I will not receive, directly or indirectly, any present or nuzzer, in money or effects of any kind, from any party or person whomsoever, on account of any suit, (or prosecution) to be instituted, or which may be depending, or have been decided, in the court of which I am cauzy (or mufty); and that I will not, directly or indirectly, derive any advantage or emolument from my office, excepting such as the orders of Government do, or may authorize me to receive."

#### No. 2.

*Form of declaration prescribed for the pundits to the courts of civil judicature.*

"I, A. B. pundit to the sudder dewanny adawlut (or the provincial court of appeal for the division of \_\_\_\_\_, or the dewanny adawlut of the zillah or city of \_\_\_\_\_, solemnly declare, that I will truly and faithfully execute the office of pundit of this court, according to the best of my knowledge and ability; that I will answer all questions that may be put to me in writing, or orally, by the said court; that I will declare or give in writing, what is in the shaster; that I will not declare or give in writing what is not warranted by the shaster; that if I declare any thing not warranted by the shaster, I shall be deserving of punishment from Ishwur. I promise and swear, that I will not receive, directly or indirectly, any present or nuzzer, in money or effects of any kind, from any party or person whomsoever, on account of any suit, to be instituted, or which may be depending, or have been decided, in the court of which I am pundit; and that

By whom such declarations to be attested, and the above rule to be enforced.

Section 3.  
To what native officers the rules so modified are meant to extend.

Section 4.  
Provisions for an oath to be taken half yearly, by the Mahomedan law officers of the civil and criminal courts, rescinded.

Rules for appointment of law officers to the zillah, city, and provincial courts, in Regulation 5, 1804, and 8, 1809.

Modified by additional rule in R. 16, 1817, &c.

*Third.* The judges, boards, collectors, or other European officers, before whom such declarations are required to be made and subscribed, shall attest the same as publicly read and subscribed before them, in pursuance of the above clause; and shall be careful to enforce a due observance of the rule therein contained, by the native officers appointed to act under them respectively." § 3. "With the modification contained in the preceding section, the rules in force, which require that certain native officers attached to the civil and criminal courts of judicature, and to other public offices, shall take and subscribe an oath, solemnly engaging to perform the duties of the office committed to them faithfully and uprightly, according to the regulations, are hereby declared to extend to the native record keepers and tehveeldars, or native treasurers, of the civil and criminal courts, though not specifically named in Section 4, Regulation 12, 1793, and Section 4, Regulation 12, 1803; as well as to all other native officers of Government holding any situation of trust and responsibility in the public service." § 4. "The second clause of Section 5, Regulation 12, 1793; the second clause of Section 5, Regulation 11, 1803; Section 37, Regulation 9, 1793, and Section 9, Regulation 7, 1803, with any other provisions in the existing regulations which require the Mahomedan law officers of the civil or criminal courts to take and subscribe an oath on the 1st of January and 1st July of each year, are hereby rescinded."

Under the rules contained in Sections 3 and 4, Regulation 8, 1809,<sup>a</sup> and the provisions of Regulation 5, 1804, therein referred to, the judges of the zillah, city, and provincial courts, whenever there be a vacancy in the station of law officers to their respective courts, are authorized to nominate for the approbation of the sudder dewanny and nizamat adawlut, a person duly qualified to succeed to the vacant station; reporting at the same time any information obtained of the past employment, character, and qualifications of the proposed successor. But with a view to admit of the occasional appointment of persons duly qualified for the important station of law officer to a zillah, city, or provincial court, although not nominated by the judges of those courts, it is further provided, in Section 5, Regulation 18, 1817, that "whenever a vacancy may occur in the station of law officer to any of the above courts, and the court of sudder dewanny and nizamat adawlut, on receiving the prescribed report of such vacancy, shall, for any special reason,

I will not, directly or indirectly, derive any advantage or emolument from my office, excepting such as the orders of Government do or may authorize me to receive."

No. 3.

*Form of declaration prescribed for the serishtadars, or other head native officers, moonshees, mohurrers, tehveeldars, record-keepers, nazirs, and other ministerial native officers of the civil and criminal courts, holding any situation of trust and responsibility.*

"I, A. B. appointed to the office of serishtadar, (or other native officer) to the sudder dewanny adawlut, and nizamat adawlut (or the provincial court of appeal and circuit for the division of \_\_\_\_\_, or the dewanny adawlut or cutcherry of the magistrate of the zillah or city of \_\_\_\_\_) solemnly declare that I will truly and faithfully perform the duties of the office to which I have been nominated, to the best of my knowledge and ability; that I will not receive, directly or indirectly, any present or nuzzer, in money or effects of any kind, from any party whomsoever, on account of any suit to be instituted, or which may be depending, or have been decided in the court; that I will not knowingly permit any person or persons under my authority, or in my immediate service, to receive directly or indirectly any present or nuzzer, in money or effects, from any party or person whomsoever, on account of any suit (or prosecution) to be instituted, or which may be depending, or have been decided in the court; and that I will not derive, directly or indirectly, any advantages or emoluments from my office, excepting such as the orders of Government do or may authorize me to receive."

<sup>a</sup> See vol. ii. of this Analysis, p. 155, 156.

judge it proper to nominate and appoint a fit person to fill the vacant office, without calling for, or adopting if received, the usual nomination of a person to succeed thereto by the judge or judges of the court in which the vacancy may have occurred, it shall be competent to the court of sudder dewanny and nizamat adawlut to make such nomination and appointment; recording on their proceedings the special ground on which the appointment so made may be founded, with any information obtained respecting the age, character, past employments and qualifications, of the person so appointed to the station of law officer, whether of a zillah, city, or provincial court."

By Section 8, Regulation 12, 1793, and Section 9, Regulation 13, 1793, (re-enacted for the ceded provinces in Section 8, Regulation 11, 1803, and Section 12, Regulation 12, 1803,) the law officers, and native ministerial officers of the civil and criminal courts, are declared amenable to the courts, to which they may be respectively attached, for acts of corruption or extortion. But previous to receiving the charge, the courts are to require the complainant to make oath to the truth of it; or to subscribe a solemn declaration, if he shall come within the description of persons whom the courts are empowered to exempt from taking an oath.<sup>1</sup> The provincial courts of appeal are also empowered to receive charges of corruption, or extortion, against the law officers, or any native ministerial officers, of a zillah or city court, relative to any appeal, or matter depending or decided in the provincial courts; or though not relating thereto, if it be proved to their satisfaction that the zillah or city court omitted or refused to receive the charge when regularly preferred to it, in the first instance; and to refer the same for trial to the zillah or city court, to which the accused may be attached; provided the complainant shall make the prescribed oath or declaration; or if there appear to the provincial court to be any objections against referring the charge to the court to which the accused is attached, they are to report the same to the sudder dewanny adawlut; which court is empowered to cause the charge to be tried by the provincial, zillah, or city court, as it may deem expedient. The courts of sudder dewanny adawlut and nizamat adawlut are, in like manner, empowered to receive charges of corruption or extortion, against any law officer, or native ministerial officer, of a provincial court of appeal, court of circuit, zillah or city court, relative to any appeal or matter depending or decided in those courts; or though not relating thereto, if it shall be proved to their satisfaction, that the charge, when regularly preferred, was not received by the proper court, in the first instance; nor by the provincial court, on regular application to it after a refusal of the charge by the zillah or city court; and provided the complainant shall make the prescribed oath or declaration, may refer the charge for trial to the court to which the accused is attached; or if there appear any objections thereto, may cause the charge to be tried by the sudder dewanny adawlut; or, if it be against a ministerial officer of a zillah or city court, by the provincial court of the division in which such court may be situated.

Charges of corruption, or extortion, against the law officers, or native ministerial officers of any civil or criminal court of judicature, which may be received under the above rules, are to be considered as civil actions; and to be prosecuted in the civil courts. If the charge be established, in whole or in part, against any such officer, the court is to adjudge him to refund the

R. 12, 1793, s. 8,  
R. 13, 1793, s. 9,  
R. 11, 1803, s. 8,  
P. 12, 1803,  
s. 12

Law officers and native ministerial officers of civil and criminal courts made amenable to their respective courts for acts of corruption or extortion.

Charge to be received on oath, or under a solemn declaration.

In what cases the provincial courts of appeal may receive such charges against the officers of a zillah or city court, and how to proceed thereupon.

And such charges against an officer of a provincial, zillah, or city court, when receivable and how to be proceeded on, by the court of sudder dewanny and nizamat adawlut.

Charges received under the above rules are to be considered civil actions and prosecuted in the civil courts.

<sup>1</sup> The original rules further required security to prosecute the charge without delay. But instead of this, it is provided by Section 10, Regulation 10, 1806, that "in the event of its appearing necessary, at any time in the course of the inquiry, sufficient hazirzamin security may be required from the accuser, to attend and prosecute the charge to a conclusion."



Judgment to be passed in cases of conviction.

Courts of justice may suspend a native officer so charged.

And power reserved to the Governor General in Council to declare him incapable of serving Government, if convicted.

Option to sue for damages if the charge be not proved.

Rules for trial, and punishment on conviction, of charges of corruption or extortion, against any private servant or dependant, of the judge of a civil or criminal court.

amount or value of any money or property which he may be proved to have corruptly received; or taken by extortion; and to pay a fine of three times the amount to Government. The courts of justice are vested with a power of suspending any native officer so charged, until a final decision be passed; and if he be convicted of the charge, a copy of the decree is to be transmitted to the Governor General in Council, who has reserved to himself the power of declaring any such officer incapable of serving Government in any future capacity. If the charge be not proved, the accused is declared to have an option of suing the accuser for damages, in any court of civil judicature to which he may be amenable. Finally, it is provided, that "if a native servant or dependant of any judge of a civil or criminal court of judicature, not being a public officer attached to the court, shall extort or receive, directly or indirectly, any money or other valuable consideration, under any pretence whatever, from any party or person, on account of any suit to be instituted, or that may be depending, or have been decided, in the court, he shall be committed as for a contempt of court, and be punished by a fine equal to treble the sum of money extorted or received, or by imprisonment, or corporal punishment, at the discretion of the court; and the judge is required to discharge such servant or dependant, and never to employ him, directly or indirectly, in his public or private capacity. If the offender shall not appeal against the decree within the limited time, or if an appeal shall not lie from the decision, or if the decision shall be confirmed in appeal, the court by which the final decree may be passed, shall transmit a copy of it to the Governor General in Council; who, in addition to the penalties or punishments specified in the decree, will, if there shall appear to him grounds for so doing, declare the offender incapable of serving Government in any capacity."

Further rules prescribed in R. 18, 1817.

Section 6.

Explanation of provisions in force for a civil action against the law officers and ministerial native officers of the courts of judicature, in cases of alleged corruption or extortion.

In what cases a law officer, or ministerial native officer, may be prosecuted in the criminal courts on a charge of corruption, extortion, or embezzlement.

And to what penalties liable on conviction.

Report to be made to Government in such cases.

The following explanatory, and additional rules, have been enacted in Sections 6 and 7, of Regulation 18, 1817:—

§ 6. "*First.* In explanation of the provisions for a civil action against the law officers and ministerial native officers of the courts of judicature, contained in Regulations 12 and 13, 1793, (extended to Benares by Regulations 11 and 12, 1795; and re-enacted for the Upper Provinces by Regulations 11 and 12, 1803;) it is hereby declared that those provisions, the principal object of which is to enable individuals, who may be aggrieved by any of the native officers in question, to obtain redress by an action in the civil courts, are not meant to preclude a criminal prosecution in cases of corruption, extortion, or embezzlement, which may appear to call for exemplary punishment. *Second.* Whenever a law officer, or ministerial native officer, may not, by the result of a civil action, have been subjected to the penalties for corruption or extortion, provided for in the above regulations, and there may appear to be sufficient grounds for a criminal prosecution against any such officer, on a charge of corruption, extortion, or embezzlement, he is hereby declared liable to a criminal prosecution before the zillah or city magistrate, and court of circuit, as provided for in other cases of misdemeanor by the regulations; and on conviction before a court of circuit, or the court of nizamat adawlut, he shall be subject to discretionary punishment to the extent, and under the provisions, stated in Section 3, Regulation 2, 1813, with respect to native officers convicted of making use of the public money entrusted to their care. *Third.* Section 4, of the regulation abovementioned, directing a report of convictions and sentences to the Governor General in Council, for the purpose of enabling him to determine whether the guilty persons should be declared incapable of again serving Government, shall also be considered applicable to any convictions and sentences under the present section." § 7. "*First.* The regulations in force not containing any pro-

vision for a summary proceeding, to enquire into and recover embezzlements of money, or other property paid into, or deposited in, the civil or criminal courts of judicature, or received by the nazir, khazanchy, or other native officers of those courts, in execution of decrees, or on account of deposits, or on any other account in their official capacity; and it appearing expedient that provision should be made for this purpose, as well as for compelling the native officers of the civil and criminal courts to deliver up any public accounts which may have been kept and withheld by them; the following rules are enacted for this purpose. *Second.* Whenever any native officer, attached to a civil or criminal court, may be charged with having embezzled any money or other property paid into, or deposited in, the court to which he is attached; or received by him in his official capacity, in execution of a decree, or on account of a deposit, or on any other account whatever; or whenever the judge or judges of a civil or criminal court may have reason to suspect any such embezzlement, on the part of a native officer attached to the court, they shall immediately institute a summary enquiry to ascertain the truth of such charge or suspicion; and shall, at the same time, require the native officer accused, or suspected, to give sufficient security for his attendance during the enquiry. In the event of such security not being given, and of its appearing necessary to keep the officer in custody, pending the enquiry, it shall be competent to the judge or judges to order the same; and to keep the party in custody of peons, or to confine him in the jail of the dewanny adawlut, until he shall give the required security, or his detention appear no longer necessary. *Third.* When the summary enquiry has been completed, if it be established thereby that any money or other property has been embezzled by the person accused, or suspected, in his official capacity, he shall be required to pay the same into court, within such time as may be limited for that purpose; and on his failure to comply with such requisition, it shall be recoverable from him, as well as from his surety, if he have given security on account of the office held by him, by the usual process of recovery, in execution of judgments of the civil courts. *Fourth.* A similar mode of proceeding shall be observed when a native officer, attached to any civil or criminal court of judicature, may withhold any public accounts which it is his duty to prepare and furnish; and the summary judgment in such cases, shall not only order the immediate delivery of the accounts withheld, but shall also impose such fine to Government as may appear just and proper, on consideration of all the circumstances of the case, and the situation of the party. *Fifth.* Any person dissatisfied with the judgment of a zillah or city court, given under the provisions of this section, shall be at liberty to prefer a summary appeal thereupon, under the rules applicable to such appeals, to the provincial court of the division; and provided sufficient security be given for performing the decree of the provincial court, on the appeal, the decision of the zillah or city court shall not be carried into execution till confirmed by the provincial court. *Sixth.* In like manner, if the original summary judgment be passed by a provincial court, a summary appeal, under the rules applicable to such appeals, shall lie to the court of sudder dewanny adawlut; and the decree of the provincial court shall not be executed till it is affirmed by the sudder dewanny adawlut, if sufficient security be given to perform the judgment of the latter court on the appeal. *Seventh.* Provided however, with respect to all cases decided, in the first instance, by a zillah or city court, and afterwards determined on appeal by a provincial court, that no second appeal shall lie to the sudder dewanny adawlut except under the prescribed restrictions for second or special appeals, in regular suits.—Nor shall final summary judgments, given under the provisions of this section, be open to a further regular suit; but shall be held conclusive, upon the merits of all cases so adjudged.”

to be adopted for the recovery of money or property deposited in the civil and criminal courts, and embelized by the native officers.

A summary enquiry to be instituted in such cases by the judge or judges of the court.

Security to be required for the attendance of the native officer. Or the officer to be kept in custody.

On proof of embezzlement the amount how to be recovered.

The same course to be pursued when public accounts may be withheld by native officers.

A summary appeal may be admitted by the provincial court from decisions passed in such cases by the zillah and city judges.

And by the sudder dewanny adawlut from the decisions of provincial courts. *Proviso.*

Rules contained in R. 2, 1813, for preventing native officers from using the public money entrusted to them.

Section 2. Native officers entrusted with the charge of public money, prohibited from making use of it.

Persons infringing this rule to be deemed guilty of a misdemeanor, and to be punished on conviction accordingly.

Trial to be submitted for the final sentence of the nizamat adawlut in certain cases.

The following rules, contained in Regulation 2, 1813, "for preventing native officers from making use of public money entrusted to their care," are applicable to those employed in the judicial department; as well as all other departments of the public service:—

§ 2. "Kazanchies, tehsildars, and other native officers entrusted with the charge of public money, are hereby strictly prohibited from making use of such money for their own advantage, or that of any other individual."

§ 3. "Any person infringing the rule contained in the foregoing section, shall be deemed to have been guilty of a misdemeanor, and shall be punished, on conviction thereof, before a court of circuit, at the discretion of the said court, under the authority vested in the courts of circuit, by Clause seventh, Section 2, Regulation 53, 1804, in cases liable to discretionary punishment; provided, nevertheless, that no person, convicted of the offence specified in the preceding section of this regulation, shall be sentenced by a judge of circuit to the punishment of stripes, or to hard labor. If in any instance imprisonment for the term of seven years shall appear to the judge of circuit to be an inadequate punishment for the offence, he shall transmit the trial, with his sentiments thereupon, to the court of nizamat adawlut, for the final sentence of that court."

The only further provisions, of the existing regulations, which it appears requisite to notice under the present head, are those enacted in Regulation 21, 1814, "for preventing the zillah and city judges and collectors of the public revenue from employing their native creditors on their respective establishments." The reasons for passing this regulation are stated in the preamble, as follows:—

R. 21. 1814.

Preamble.

"Whereas public inconvenience has been in some instances experienced from persons, invested with important and responsible offices, employing on their establishments natives being their private creditors; and whereas it is essential to discourage the practice, among the junior part of the service, of contracting debts, which not only prove a source of great personal embarrassments to them as individuals, but are likewise entirely incompatible with that independence and freedom of action, which it is essential, on public grounds, that persons succeeding to responsible offices should enjoy; the following rules have been enacted, to be immediately in force throughout the provinces dependant on the presidency of Fort William." § 2. "From and after the promulgation of this regulation, no person, being a creditor of any zillah or city judge or magistrate, of any collector of the land revenue or customs, or of any agent for the provision of salt or opium, shall be appointed to any official situation on the establishment of the person whose creditor he may be. It shall consequently be the duty of the boards of revenue and trade, of the board of commissioners, and of the courts of appeal and circuit, on receiving the reports prescribed by the provisions of Regulation 8, 1809, to satisfy themselves fully that the natives, recommended to fill any vacancies on the establishment of the European officers acting under their control respectively, are not the creditors of the latter. With this view, it will be the duty of the said boards and courts to make full enquiries on the subject, not only from the officers from whom such reports may be received, but through such other channels as may be necessary to guard against any infringement or evasion of the provisions of the present regulation."

Section 2. The zillah and city judges, and collectors of the public revenue and others, prohibited from employing on their establishments any natives, being their private creditors.

Duty of the Boards and provincial courts in this case.

Section 3. The foregoing rules to be equally applicable to the relatives and dependants of such native creditors.

§ 2. "From and after the promulgation of this regulation, no person, being a creditor of any zillah or city judge or magistrate, of any collector of the land revenue or customs, or of any agent for the provision of salt or opium, shall be appointed to any official situation on the establishment of the person whose creditor he may be. It shall consequently be the duty of the boards of revenue and trade, of the board of commissioners, and of the courts of appeal and circuit, on receiving the reports prescribed by the provisions of Regulation 8, 1809, to satisfy themselves fully that the natives, recommended to fill any vacancies on the establishment of the European officers acting under their control respectively, are not the creditors of the latter. With this view, it will be the duty of the said boards and courts to make full enquiries on the subject, not only from the officers from whom such reports may be received, but through such other channels as may be necessary to guard against any infringement or evasion of the provisions of the present regulation." § 3. "The rules contained in the preceding section, for precluding the creditors of the public officers above-mentioned from being employed on their public establishments, shall be considered equally applicable to the relatives and dependants of such creditors: the former, as well as the latter, shall consequently be equally precluded from being employed on the establishments of any of the public officers above

described." § 4. "In order to prevent misconception, it is hereby explained, that the foregoing provisions are not intended to apply to the commercial residents and commercial agents."

Section 4.  
The present regulation not applicable to commercial residents and agents.

*Charges against European Public Officers.*

By the Statute 13 Geo. III. cap. 63, sect. 33, it is enacted, that "if any of his Majesty's subjects in India, employed by, or in the actual service of, the United Company, shall be charged with, and prosecuted for, any breach of public trust, or for embezzlement of public money, or stores, or for defrauding the United Company; every such offender, being convicted thereof in the supreme court of judicature, may be fined and imprisoned, and judged to be for ever after incapable of serving the United Company." It is further enacted by the Statute 33 Geo. III. cap. 52, section 62; "that the demanding or receiving any sum of money, or other valuable thing, as a gift or present, or under color thereof, whether it be for the use of the party receiving the same, or for, or pretended to be for, the use of the Company, or of any other person whatsoever, by any British subject holding or exercising any office or employment under his Majesty, or the United Company, in the East Indies, shall be deemed and taken to be extortion, and a misdemeanor at law; and shall be proceeded against and punished as such, under and by virtue of this act; and the offender shall also forfeit to the King's Majesty, his heirs and successors, the whole gift or present so received, or the full value thereof." These provisions of the British legislature are open to the direct prosecution of the charges therein mentioned before the supreme court of judicature at Calcutta, by any individual who may be desirous of prosecuting such charges in that court, without the interposition of Government. But individuals cannot be expected, in all cases, to prosecute charges of the nature specified (at their own risk and expense) in the supreme court at the presidency; and when an accusation is preferred to any of the courts of judicature authorized to receive the same, or public information is given to the Governor General in Council, of corruption, embezzlement, or other gross malversation, breach of trust, or high misdemeanor, by a public officer, it is requisite for the ends of justice, that an immediate inquiry should be instituted for the purpose of ascertaining whether such accusation, or information, be founded or otherwise; in order, that in the former case, Government may be enabled to judge, whether such officer deserve any longer to be continued in the employment of the Company, and that (in cases which may appear to require it) the provisions of the law may be carried into effect by a public prosecution in the supreme court of judicature; or if the charge shall appear to be unfounded, that justice may be done to the character of the accused. Specific rules for these purposes were therefore enacted in Regulations 8, and 10, 1806; the former entitled "A Regulation to amend the existing rules, for receiving complaints in the city and zillah civil courts, against collectors of the land revenue and customs, commercial residents, and other European public officers declared amenable to those courts, for acts done in their official capacity, in opposition to any published regulation; and to make further provision for a special inquiry, in certain cases of charge, or information, against any such officers:" the latter, viz. Regulation 10, 1806, entitled "A Regulation for extending to the judicial department such parts of Regulation 8, 1806, as are applicable to charges or information, against the European public officers employed in that department; and for making further

Provisions of Statute 13 Geo. III. cap. 63, sec. 33.

And of Statute 33 Geo. III. cap. 52, sec. 62.

Remarks on above provisions stated in preamble to Reg. 8, 1806; with reasons for the rules prescribed in that Regulation, and in Reg. 10, 1806.

Titles of the two regulations above noticed, which were subsequently rescinded by Regulation 17, 1813.

Preamble to the Regulation last mentioned

R 17, 1813, § 2. Parts of Regulations 8 and 10, 1806, rescinded.

Section 3. Enquiry into complaints or charges of corruption, embezzlement, or other gross fraud, breach of trust, or high misdemeanor against a judicial officer to be conducted under the superintendence of the sudder dewanny adawlut. Such enquiry into complaints or charges against a revenue officer to be conducted under the superintendence of the board of revenue or board of commissioners. Such enquiry into complaints or charges against officers attached to the commercial, salt, or opium department, to be conducted under the superintendence of the board of trade. Section 4. Accusations or informations against public officers not to be acted upon unless given in upon oath, or under a solemn declaration.

provision in such cases.” It was however subsequently judged advisable to simplify the rules contained in the two regulations abovementioned; “with a view to the more expeditious termination of the investigations therein provided for; and to other objects connected with the public convenience.”

Sections 4 to 19 of Regulation 8, 1806, and Regulation 10, 1806, (excepting such part thereof as relates to the security to be required from persons preferring charges of corruption or extortion against the Hindoo and Mahomedan law officers and ministerial officers of the courts of judicature,) were therefore rescinded by Section 2, Regulation 17, 1813; and the following rules were enacted in the Sequel of that regulation.

§ 3. “*First*. Whenever a complaint or charge of corruption, viz. of the corrupt demand or receipt of money or other valuable thing, as a gift or present, or of the embezzlement of public stores, or of any fraud or breach of public trust, or other gross misdemeanor, shall be preferred against any European officer attached, or who had been attached, to the judicial department, or when any matter of the nature in question, implicating the conduct of a judicial officer, shall appear in the course of any proceeding which may come before the sudder dewanny adawlut, or be specially reported to it by a subordinate court, the enquiry into such charge or complaint shall be conducted according to the following provisions, under the superintendence of the court of sudder dewanny adawlut. *Second*. Whenever a charge or complaint of the nature of those described in the preceding clause, shall be preferred against any European officer attached, or who had been attached, to the revenue department, or when any matter of the nature in question, implicating the conduct of a revenue officer, shall appear in the course of any proceeding which may come before the board of revenue or board of commissioners, the enquiry into such charge or complaint shall be conducted under the superintendence of the board of revenue or board of commissioners, according as the person accused may be or may have been subject to the authority of one or the other of those boards, when the alleged acts of misconduct were committed. *Third*. Whenever a charge or complaint of the nature of those abovementioned, shall be preferred against any European officer attached to the commercial, salt, or opium department, or otherwise subject to the authority of the board of trade, or whenever any matter of the nature in question, implicating the conduct of any such officer, shall appear in the course of any proceeding which may come before that board, the enquiry into such charge or complaint shall be conducted under the superintendence of the board of trade.” § 4. “*First*. With a view to the protection of the characters of the public officers, it is hereby declared, that no accusation or information, of the nature above described, shall be acted upon, unless the truth of the charge be averred on oath, or under a solemn declaration, (if the deponent be of a rank or cast, which would render it improper to require his oath,) from the deponent’s personal knowledge of the facts and circumstances, on which the charge is grounded. *Second*. With a view

<sup>1</sup> The rules contained in Regulations 8 and 10, 1806, were stated at length, in the first edition of this Analysis, vol. i. pages 461 and 618. But having been rescinded by Section 2, Regulation 17, 1813, and superseded by the rules now in force under that regulation, it appeared unnecessary to insert them in the present volume.

<sup>2</sup> By Regulation 4, 1819, for the appointment of a distinct board at the presidency, “for the superintendence of the revenue derived from customs, town duties, salt, and opium,” the powers and duties before vested in the board of revenue, with respect to town duties and customs, and in the board of trade with respect to salt and opium, have been transferred to the new board; which is denominated *the board of revenue in the customs, salt, and opium departments*.

likewise to the more effectual accomplishment of the purpose stated in the preceding clause, that is, the protection of the characters of the public officers from malicious and calumnious aspersions, it is hereby declared, that it shall be competent to the sudder dewanny adawlut, to the board of revenue, the board of commissioners, and the board of trade, should they deem it advisable, to require the person, by whom any public accusation or information may be preferred, to furnish such security as may be deemed reasonable to attend and prosecute the charge to a conclusion; and supposing such security not to have been taken in the first instance, to require it in any subsequent stage of the business, should circumstances appear to render that precaution at any time necessary or proper." § 5. "*First.* Whenever any charge or information, of the nature above described, shall be preferred direct to the sudder dewanny adawlut, the board of revenue, the board of commissioners, or board of trade, it shall be the duty of those authorities to examine the complainant or informant circumstantially on oath, or under a solemn declaration, if he be entitled to be exempted from taking an oath, and likewise to make such further general enquiries on the subject, either by a reference to the public records, or by calling on the party accused, for an explanation of the alleged acts of misconduct, or in any other mode, which the nature of the case may suggest, as may be sufficient to satisfy their minds whether grounds exist for a regular and formal enquiry into the said charge or information or otherwise. *Second.* In order at the same time to afford sufficient facilities to persons, who may have substantial grounds for complaint against any of the public European officers employed in the judicial, revenue, commercial, salt, and opium departments, to obtain redress of any real grievances, it shall be the duty of every court of civil judicature, by which any public charge or information of the nature above described may be received, to examine the complainant or informant circumstantially on oath, or under a solemn declaration, if he be entitled to be exempted from taking an oath, and to transmit the deposition so taken to the sudder dewanny adawlut, the board of revenue, the board of commissioners, or board of trade, according as the person accused may be subject to either of those authorities for their further consideration, and for such further general enquiries as may be judged necessary for the purpose stated in the preceding clause. *Third.* Should the sudder dewanny adawlut, the board of revenue, or board of commissioners, or board of trade, according as the case may be brought before either of those authorities, be of opinion, that the charge or information is frivolous and vexatious, they shall merely inform the party that they do not see any substantial reason for entering further into the enquiry. *Fourth.* Should either of the authorities mentioned in the first part of the preceding clause be of opinion, after the general enquiries above noticed, that substantial grounds exist for making a regular and formal enquiry into the truth of any public charge or information which may be preferred against any European officer subject to their control, they shall submit the documents on which their opinion may be grounded, together with a clear statement of the charges, reduced to distinct heads or articles, which they would propose to be made the subject of a regular investigation, to the Governor General in Council for his consideration and orders." § 6. "*First.* Should the Governor General in Council, on receipt of the report above described, concur with the authority by which it may be submitted, that a regular investigation should be made into the truth of the charge or information preferred against the person accused, he will appoint a commissioner or commissioners for the performance of that duty, who, previously to entering upon the discharge of it, shall take the following oath:—

Persons preferring charges to be required to furnish security to prosecute them to a conclusion.

Section 5.  
In cases of charges being preferred direct to the sudder dewanny adawlut, the board of commissioners, or board of trade, previous examination and investigation to be made whether grounds exist for a regular and formal enquiry.

Every court of civil judicature receiving such charges to examine the complainant on oath and transmit the deposition to the proper superintending authority.

Superintending authorities may dismiss frivolous or vexatious charges.

Superintending authorities to cause complaint examined substantively and ground to be put forward for enquiry.

Section 6.  
Should the Governor General in Council concur in such opinion, he will appoint commissioners for making a regular enquiry.

Oath of commissioner.

"I, A. B. appointed a commissioner for making a special enquiry into a certain charge (or charges) exhibited against C. D. do hereby solemnly swear, that I will faithfully and impartially perform the duty committed to me, without fear, favor, or bias, to the best of my ability, knowledge, and judgment." "So HELP ME GOD."

The commission to be holden at the most convenient place. Section 7. A general control over the proceedings of such commissions, vested in the proper superintending authorities.

*Second.* The Governor General in Council will at the same time order the commission, so appointed to be holden, at such place as may be most convenient, and best adapted to the ends of justice." § 7. "The sudder dewanny adawlut, the board of revenue, the board of commissioners, and the board of trade, (according as the person accused may be under one or other of those authorities,) are hereby invested with a general control over the proceedings of all commissions constituted under the present regulation. The commissioners are accordingly to apply to the court of sudder dewanny adawlut, and to those boards respectively, for any instructions which they may require in the execution of the duty entrusted to them, for which provision may not have been expressly made by the present, or any other regulation; and the court and boards abovementioned, are empowered to pass such orders on the subject, as may appear to be most consonant to the general principles of equity, and most conducive to the purposes of substantial justice. Provided however, that if any doubt or difficulty should arise in the conduct of such investigations, for which it may appear to be advisable to make provision by a general regulation, the said court and boards shall prepare the necessary draft of a regulation for the purpose, and submit it to the Governor General in Council for his consideration." § 8. "Whenever a special commission may be appointed under the provisions of this regulation, for the investigation of charges exhibited against a public officer, the Governor General in Council will determine, on a view of the nature and circumstances of the case, whether the accused shall be suspended from the discharge of the functions of his office, and if so, whether he should be permitted to draw the established allowances of his office, or otherwise." § 9.

Section 8. Government will determine whether the accused shall be suspended, or permitted to draw his established allowances.

Section 9. Government will determine whether the prosecution shall be conducted by the accuser or otherwise.

Section 10. General duty of the commissioners on such investigations.

"Whenever a charge shall be referred for investigation to a special commission, the Governor General in Council will determine whether the conduct of the prosecution shall be left to the accuser, or be undertaken on the part of Government. In the latter case, the Governor General in Council will nominate such person or persons as may be deemed proper, to bring the evidence in due order before the commission, to attend the proceedings and conduct the prosecution on the behalf of Government." § 10. "It shall be the general duty of commissioners appointed under this regulation, after receiving the plaint or charge, and the documents from which the same may have been prepared, to call upon the person accused for his reply to the accusation; to examine upon oath, or under a solemn declaration, the witnesses named by the accuser, or the accused, as having knowledge of any facts relative to the charges or defence; to receive any further written documents offered in support of, or against the accusation, and to call for and take any further requisite evidence which may be indicated by the witnesses adduced, or documents exhibited, by either party, and may appear to be necessary for the ascertainment of facts, or the discovery of the truth or falsehood of the charges; or of any part thereof." § 11. "For the discharge of the duties specified in the preceding section, or any other functions which may be delegated to a commission constituted under this regulation, it shall be vested with the same powers as are exercised by the zillah and city courts, except that all process to cause the attendance of witnesses, or other compulsory process, shall be served through, and executed by, the zillah or city judge in whose jurisdiction the commission may be held, on the witness, or other person

Section 11. Powers vested in the commission.

upon whom the process is to be served, may reside." § 12. On the close of the evidence in support of the prosecution, and in defence of the accused, he shall be at liberty to record any observations upon the result of the enquiry, which he may think necessary for the vindication of his conduct and character. The accuser, or person appointed to conduct the prosecution on the part of Government, shall also be at liberty to record any remarks on the subject of the prosecution which he may deem requisite." § 13. "When the proceedings of the commission shall have been concluded, or as soon afterwards as circumstances may admit, the commissioner, or commissioners, shall transmit to the sudder dewanny adawlut, the board of revenue, or board of commissioners, or the board of trade, as the case may be, the whole of the proceedings held, and documents received (accompanied with translations of papers not in the English language), together with a summary of the pleadings and evidence, and his or their opinion on the merits of the case." § 14. The sudder dewanny adawlut or the boards to which the case may belong, after duly considering the proceedings and the report transmitted to them under the preceding section, and after calling for any further evidence which may appear to them attainable and requisite, shall submit the whole of the proceedings and documents received by them to the Governor General in Council, with their opinion, whether any and what facts charged against the party accused appear to have been established." § 15. The Governor General in Council, on consideration of the report and proceedings submitted to him, in pursuance of the foregoing section, will pass such decision on the case, as may appear to him most consonant to the principles of justice, and to the constitutional powers possessed by Government in matters of this description; and in the event of his deeming it necessary that the party accused should be brought to trial, by a public prosecution, in the supreme court of judicature, will issue the necessary instructions for that purpose to the law officers of Government. But whatever proceedings may be held, or whatever decision or order may be passed by Government, individuals deeming themselves aggrieved, by any of the public officers, will be at all times at liberty to seek redress in the supreme court in the mode prescribed by law. § 16. "In cases in which it shall appear on a full investigation of the merits of the case, that the charges or complaints preferred against any of the European officers abovementioned are well founded, the person by whom they may have been preferred, shall be at liberty to submit an application to the sudder dewanny adawlut, the board of revenue, board of commissioners or board of trade, as the case may be, praying a reimbursement of the expense which may have been incurred by him in the conduct of the prosecution; and the authority to whom such petition may be presented, shall forward it to Government, with their opinion as to the propriety of indemnifying the party for the expense so incurred, or otherwise. The Governor General in Council will, of course, on receipt of any such reference, consider and determine whether it be advisable to comply with the application in question; but it is to be clearly understood that Government does not pledge itself to indemnify any person for the expense which may be incurred on occasions of the above nature, whatever may be the result of the investigation; except in cases in which the Governor General in Council, in the exercise of a sound discretion, may deem it proper and expedient to do so."

By Section 7 of the Regulation above cited, the general control over the proceedings of all commissions constituted under the provisions of Section 6, was vested in the sudder dewanny adawlut, the board of revenue, the board of commissioners, or the board of trade, respectively; and in Section 14, it is provided that the commissioner, or commissioners, so appointed, shall transmit to one or other of the said authorities, as the case may be, the whole of

Section 12. Accused and accuser to be at liberty to record observations at the close of the evidence.

Section 13. Commissioners to transmit proceedings and report to the superintending authorities on the merits of the case.

Section 14. Proceedings and report to be submitted to Government by the superintending authorities, after such further inquiries as they may deem requisite, with their opinion thereon.

Section 15. Government will decide on the case, but such decision not to preclude persons deeming themselves aggrieved from seeking redress in the supreme court.

Section 16. How applications for reimbursement of expenses incurred in such cases are to be preferred and decided upon.

Preamble to Regulation 8, 1817, stating reasons for modifying part of Regulation 17, 1813.



the proceedings held and documents received, together with a summary of the pleading and evidence, and his or their opinion on the case; and that the sudder dewanny adawlut or the board to which the case may belong, shall submit the whole of the proceedings and documents received by them to the Governor General in Council, with their opinion whether any and what facts, charged against the party, appear to have been established. But on some occasions, an adherence to the above form of proceeding might be productive of serious delay in the final determination of the case, and of consequent distress to the accused party, as well as of inconvenience to the public service. The following rules were therefore enacted, in Regulation 8, 1817, in modification of the provisions abovementioned. § 2. "Whenever a special commission shall be appointed under the provisions of Regulation 17, 1813, for the investigation of charges exhibited against a public officer, the Governor General in Council will determine whether the commission, so appointed, shall be placed under the control of any of the authorities above specified, in the manner prescribed in Sections 7, 13, and 14, of the regulation aforesaid, or shall act immediately under the authority of Government; and all commissions, appointed as aforesaid, shall be guided by the instructions which they may receive in this behalf from the Governor General in Council." § 3. "When the commission shall be instructed to act immediately under the authority of Government, it shall submit directly to the Governor General in Council, (without the intervention of any of the authorities above specified,) the proceedings held, and documents received on the occasion, accompanied by translations of papers not in the English language, together with a summary of the pleadings and evidence, and their opinion on the merits of the case, in like manner as they are now required to submit the same to the sudder dewanny adawlut, and the board of revenue, board of commissioners, and board of trade respectively; and the Governor General in Council, after receiving the report and proceedings submitted by the commissioners, will proceed in the case, in the same manner as if the said proceedings and report had been submitted by the sudder dewanny adawlut, or one of the said boards: provided however, that if, in any case, on consideration of the proceedings and report of the commissioners, it shall appear to the Governor General in Council necessary that further evidence be taken, or that a further explanation be given by the commissioners, of their sentiments on any point connected with the case investigated by them, it shall be competent to the Governor General in Council to direct the commissioners accordingly; and the commissioners shall be authorized and required to take such further evidence, as far as the same may be attainable, and to furnish such further explanation as may be required." § 4. "When a commission may be instructed, as aforesaid, to act under the immediate authority of Government, such commission shall apply to Government for any instructions which they may require in the execution of the duty entrusted to them, for which provision may not have been expressly made by Regulation 17, 1813, or any other Regulation; and the Governor General in Council will pass such orders on the subject as may appear consonant to the general principles of equity, and most conducive to the purposes of substantial justice. And in any case in which any doubt or difficulty may arise in the conduct of the investigation, for which it may appear advisable to make provision by a general regulation, the commissioners shall be competent to prepare the draft of a regulation for the purpose, and to submit it to the Governor General in Council for his consideration and orders." § 5. "Provided however, that in any case wherein the commissioners shall entertain doubts of the intent and meaning of any provisions of the regulations which are or may be in force, they shall submit the point to the court of sudder dewanny adawlut

Section 2.  
Control over  
the proceed-  
ings of com-  
missions ap-  
pointed under  
Regulation 17,  
1813, by whom  
to be exercis-  
ed.

Section 3.  
The commis-  
sion, when in-  
structed to  
act immedi-  
ately under  
the authority  
of Govern-  
ment, shall  
submit their  
proceedings  
directly to the  
Governor Gen-  
eral in Coun-  
cil.

Section 4.  
And to apply  
to Govern-  
ment for any  
instructions  
which they  
may require.

Section 5.  
Upon ques-  
tions regard-  
ing the intent  
and meaning  
of any regula-  
tions, the com-  
missioners to  
address them-  
selves to the

for their consideration, and shall be guided by the determination passed by that court." § 6. "Provided further, that whenever Government shall determine, that the commission to be appointed under the provisions of the regulation abovementioned shall not be placed under the control of the sudder dewanny adawlut, the board of revenue, the board of commissioners, or the board of trade, such commission shall, in no case, consist of less than two persons, one of whom at least shall, in all practicable cases, be selected from among the officers in the judicial department of the service."

court of sudder dewanny adawlut, and to be guided by their determination. Section 6. The commission in no case to consist of less than two persons.

*Absence from Stations ; and occasional duties of Registers and Assistants.*

The rules prescribed for the guidance of the European public officers employed in the revenue department, when desirous of quitting their stations, on leave of absence, as well as the provisions made for the temporary discharge of duties in that department, when vacancies may arise from death, removal, or otherwise, have been stated in the second volume of this Analysis, together with general rules for the civil service, providing in what cases, and to what extent, the public officers shall be liable to a deduction of part of their allowances when absent from their stations ; passed by the Governor General in Council, on the 28th April, 1809 ; 19th September, 1809 ; and 29th January, 1814. The following rules, "to provide for the occasional absence of the zillah and city judges and magistrates, in the provinces of Bengal, Behar, Orissa, and Benares, from their respective stations ; and prescribing the duties to be performed by the registers of the courts, and the assistants, on such occasions, as well as in the discharge of their official functions," were enacted in Regulation 4, 1796 ; and re-enacted for the ceded provinces in Section 23, Regulation 2, 1803, and Sections 15, 16, of Regulation 12, 1803.

Rules for officers employed in the revenue department stated in second volume of this Analysis. Further rules for zillah and city judges and magistrates, registers, and assistants, contained in R 4 1796, R 2 1803 and R 12 1803.

§ 2. "Any zillah or city judge and magistrate who may be desirous of quitting his station, on whatever account, is to apply for permission to the Governor General in Council ; and, except in emergent cases of indisposition, is not to leave his station until such permission shall have been obtained and received. The letter of application is to specify the purpose for which the leave of absence is applied for ; the period for which it is desired ; and the name of the register, or senior assistant on the spot, to whom the charge of the offices of judge and magistrate will devolve, if not otherwise provided for." § 3. The Governor General in Council, on receipt of the abovementioned applications, will determine in every instance, wherein he may grant leave of absence to the judge and magistrate to quit his station, whether to delegate the temporary execution of the duties of judge and magistrate to the register or senior assistant on the spot ; or to appoint any other person by a special commission thereto ; or to make other provision for carrying on such part of the business of the station, civil and criminal, as cannot be postponed, according to the urgency and circumstances of the case. The result of this determination will be immediately communicated to the judge and magistrate, and his register and assistant, or any other person appointed to

Section 2. Zillah and city judges to apply to the Governor General in Council for permission to quit their station and to wait the receipt thereof. I except in emergent cases. When the letter of application is received. Section 3. The Governor General in Council will determine in every instance whether to delegate the duties of judge and magistrate to the register and senior assistant or to appoint any other person there to.

\* Note, page 129.

\* In a circular letter from the register of the sudder dewanny and nizamat adawlut, dated the 4th January, 1811, the zillah and city judges and magistrates were instructed, with the sanction of the Governor General in Council, to accompany all applications from themselves, or their registers, for leave of absence, with a statement of the business depending in their respective civil and criminal courts, according to a prescribed form, as follows—

To whom his determination will be communicated.

Section 4.  
To whom zillah and city judges and magistrates are to report their departure from, and return to, their stations.

Section 5.  
Report to be made to the Governor General in Council, when the offices of judge and magistrate may devolve to the register and senior assistant, from death, indisposition, or other casualty. Duties to be performed by the register and assistant in such case till the receipt of orders.

Section 6.

What part of

act for him; and notice of it is to be given at the same time to the courts of sudder dewanny and nizamat adawlut, and the provincial courts of appeal and circuit, within whose jurisdiction the zillah or city court of the judge and magistrate, to whom leave of absence may be granted, is situated. § 4. "The zillah or city judges and magistrates, to whom leave of absence may be granted, are to report their actual departure from their stations, as well as their return thereto, to the Governor General in Council, the courts of sudder dewanny and nizamat adawlut, and the courts of appeal and circuit, within whose jurisdiction their respective courts may be situated." § 5. "In cases wherein the charge of the offices of judge and magistrate of any zillah or city may, from death, indisposition, or other casualty, devolve to the register or senior assistant on the spot, without any express provision for the same having been made by the Governor General in Council, as specified in Section 3, of this regulation, an immediate report of the circumstances of the case is to be made, by such register or assistant, to the Governor General in Council for his orders; and, till the receipt thereof, he is to confine himself to the discharge of the proper duties of his station as register or assistant; and to the exercise of such part of the powers of judge and magistrate as may be indispensably necessary for the immediate execution of processes from the provincial courts of appeal and circuit; or of orders from the sudder dewanny and nizamat adawluts; for preserving the peace of the district, or for such other cases of emergency as will not admit of delay." § 6. "The foregoing

1. Number of original causes and appeals depending in the civil court—

Before the Judge, Mr.—

Regular	.	.	.	.	.	50
Summary	.	.	.	.	.	10
						—60

Before the First Register, Mr.—

Regular	.	.	.	.	.	40
Summary	.	.	.	.	.	10
						—50

Before the Second Register, Mr.—

Regular	.	.	.	.	.	30
Summary	.	.	.	.	.	10
						—40

Total—150

2. Number of persons under examination on criminal charges, depending before the magistrate, and his assistants—

Before the Magistrate—

Under bail	.	.	.	.	.	100
In confinement	.	.	.	.	.	50
						—150

Before the Assistants—

Under bail.	.	.	.	.	.	30
In confinement	.	.	.	.	.	20
						— 50

Total—200

It may be further noticed, in this place, that by a general order of Government, passed on the 11th March, 1796, the judges and magistrates were directed "not to grant leave of absence to their registers or assistants, without having obtained the previous sanction of Government, except when serious indisposition may render it absolutely necessary that they should leave the station immediately; in which event they are to report the circumstance for the information of Government."

rules are meant to supersede and rescind such part of Section 7, Regulation 13, 1793, as respects the duties of the registers and assistants to the judges and magistrates of the several zillahs, and the cities of Dacca, Moorshedabad, Patna, and Benares, in the event of the temporary absence or indisposition of the judge or magistrate, or of the offices of judge and magistrate becoming vacant by death or otherwise; but the latter part of the said section, which restricts the registers in general from the exercise of any powers not vested in them or authorized to be delegated to them by the regulations, is still to be considered in full force; and it is hereby declared to apply equally to all assistants to the zillah and city courts, civil or criminal; who are to perform all such ministerial acts as may be prescribed to them by the judges and magistrates, consistently with the regulations; but are in no cases to exercise judicial powers, either civil or criminal, except in the cases expressly provided for by this regulation, or in which they have been, or may be, expressly authorized to exercise such powers by some regulation passed on or subsequent to the 1st May, 1793, and printed and published in the manner directed in Regulation 41, 1793.<sup>1</sup>

The rules above stated, for the guidance of the zillah and city judges and magistrates, were extended to the judges of the provincial courts of appeal and circuit, by Section 15, Regulation 2, 1801, with an additional clause to the following effect. "Previous to any provincial, zillah, or city judge, or any judge of circuit, or zillah or city magistrate, being permitted by Government to quit his station, a reference shall be made to the sudder dewanny adawlut, and nizamat adawlut, to ascertain the state of the public business depending before such judge or magistrate; and whether the leave of absence desired can be conveniently granted, or otherwise."<sup>2</sup>

<sup>1</sup> The registers to the courts of civil judicature, and their assistants, as well as all ministerial officers of the civil and criminal courts who may be covenanted servants of the Company, are appointed by the Governor General in Council; and previously to entering upon the execution of the duties of their offices are required to take and subscribe, in open court, before the judge or judges of the court to which they may be attached, the oath prescribed in Section 3, Regulation 13, 1793, (re-enacted for the ceded provinces by Section 3, Regulation 12, 1803) which corresponds in substance with that prescribed for the judges of the zillah and city courts. It is further directed in Section 5, of the regulation adverted to, that the "registers to the civil and criminal courts are to perform all such official acts as may be prescribed to them by the judges of the courts; who are empowered to assign to ministerial officers, attached to their several courts, the particular duties or business to be performed by them respectively." They are also required (by Section 8) with their assistants, and the native officers attached to the courts, "to procure all acts of the courts to be executed; in the manner and conformably to the rules which the judges of the courts may think it proper to prescribe."

<sup>2</sup> The following extract from the proceedings of Government in the public department, under date the 1st March, 1817, contains the rules now in force, relative to deductions from the salaries of civil servants, when absent from their stations, whether on account of bad health, or of their private affairs; also respecting the extra and deputation allowances to be granted to civil servants, when employed in officiating or temporary appointments.

"His Excellency the Governor General in Council has maturely weighed the observations and reasoning contained in the reports received from the committee appointed to revise the existing rules regarding the allowances of civil servants, when absent from their stations, on certificates of ill health, and the indulgence to civil servants of temporary leave of absence from their stations, without deduction from their salaries; also respecting the allowances to be granted to civil servants when officiating for others absent from their stations from sickness or other cause.

2. The Governor General in Council has felt an anxious wish to extend every possible indulgence to the case of those servants, who are forced by sickness, often occa-

Reg. 13, 1793, is meant to be rescinded by the foregoing rules.

What part to be still considered in force

General duty of all assistants to the zillah and city courts, civil and criminal, and prohibition of their exercise of judicial powers without express authority.

Rules above stated extended to judges of provincial courts of appeal and circuit, by R. 2 1801, s. 15.

With clause directing a reference to the court of sudder dewanny and nizamat adawlut.

sioned by a zealous discharge of their public duties, to leave their stations, or the country for a time; and his Lordship in Council has only been induced to withdraw the indulgence granted by the resolutions of Government of the 29th January, 1814, on this head, through experience, that the expense incurred by Government, from the operation of those rules, goes far beyond what had been calculated, and that its indefinite extent is increasing. These circumstances led the Governor General in Council to believe, that in granting an entire remission from the operation of the rules passed on the 28th April, 1809, the spirit of indulgence had been carried to a length involving too great a sacrifice of the public interests.

3. The object of Government however being merely to save the Honorable Company from the extra expense hitherto occasioned by the absence of their servants from their stations, the committee have acted judiciously in proposing, that the scale of deductions to be made from the salaries of absentees should be as limited as the attainment of that object would admit.

4. The committee have also very properly revised the present rates of extra and deputation allowance, not only with a view to render them more relatively equal than they have hitherto been among the different branches of the service, but also to reduce those which might appear unnecessarily large, and consequently to enable Government to make a proportionate diminution in the scale of deductions proposed to be made from the salaries of absentees to cover this charge.

5. The Governor General in Council now proceeds to pass the following resolutions and orders on the different points, to which the committee's reports relate.

6. Under the circumstances stated in the committee's reports, Government has resolved to establish the following rules, in respect to the deductions to be made from the salaries of persons absent from their stations, whether on account of bad health, or on account of their private affairs; likewise on other points connected with such absence.

7. A deduction of one sixth, except in the cases below stated under heads numbered 8 and 9, to be made from the salaries or authorized emoluments of all civil servants compelled to leave their stations on account of sickness, during the whole period of their absence.

8. This rule however is not to apply to zillah or city registers, or to other individuals whose allowances may not exceed 500 rupees per mensem. It is not intended to make any deduction from the salaries of civil servants holding such appointments, when absent from their stations on account of bad health.

9. In cases in which the salaries or authorized emoluments of civil servants exceed the sum stated under the foregoing head No. 8, only in such a small degree, that a deduction at the rate of one-sixth would reduce the remaining proportion below 500 rupees per mensem, it is the intention of Government, that the deduction should not be carried to the full extent of one sixth, but merely so far as will leave to the individual the monthly sum abovementioned, of sicca rupees 500.

10. A deduction at the rate of one-sixth to be made from the salaries or authorized emoluments of all civil servants, stationed within the divisions of Bareilly and Benares, or as they are ordinarily denominated the western provinces, who may, with the sanction of Government, be absent from their stations, on account of their private affairs, during any period not exceeding eight weeks in the year.

11. A deduction of one-sixth to be made from the salaries or authorized emoluments of all civil servants stationed in the lower provinces, who may, with the sanction of Government, be absent from their stations, on account of their private affairs, during any period not exceeding six weeks in the year.

12. A deduction of one-third to be made from the salaries or authorized emoluments of civil servants who may be absent from their stations, on account of their private affairs (and not on account of sickness,) for periods of time respectively, exceeding those specified under the two foregoing heads numbered 10 and 11, according as the rules contained under these heads may apply to their cases.

13. It is however distinctly to be understood, that although Government have fixed those deductions (as specified under heads numbered 10, 11, and 12,) to be made from the salaries or authorized emoluments of persons absent from their stations on account of their private affairs, yet the Governor General in Council will of course exercise his discretion, in granting, or refusing a compliance with, applications of this description, in reference to the public convenience, and to the grounds of the application.

14. In this view, and under the desire entertained by Government, to place the servants in the different branches of the service, as far as may be practicable, consistently with the public interests, on the same footing, in regard to the periods of the year at

which they may obtain leave of absence from their stations, on account of their private affairs, the Governor General in Council is pleased to rescind so much of the orders of Government passed in the judicial department on the 19th September, 1809, as establish a distinction in this respect between the judicial officers, and those attached to the political, territorial, public and commercial departments.

15. The resolutions of the Governor General in Council of the 29th January, 1814, relating to the mode in which applications are to be made to Government, for leave of absence, on account of bad health, or for an extension of that leave, are hereby rescinded, and the following rules are established in their stead.

16. Persons applying for leave of absence, on account of indisposition, are to accompany such application with a certificate of the state of their health, from the surgeon or assistant-surgeon of their station, agreeably to the form inserted below, and marked A.

17. When an extension of leave of absence may be deemed necessary, such officers, if they have proceeded to any station immediately dependent on this presidency, without coming to Calcutta, are to attend the senior surgeon, whether civil or military, of such station, and to obtain from him a certificate, conformably to the accompanying form marked B, to be renewed monthly; and if the officers in question shall have come to Calcutta, they are to obtain from the surgeon attending them, a similar certificate of sickness, to be also renewed monthly, and which must be confirmed by the concurrent testimony of the superintending surgeon of the presidency, or in his absence, by one of the members of the medical board.

18. When such officers may find it necessary to proceed to sea, or to Europe, for the recovery of their health, they are to obtain a certificate to that effect from the surgeons attending them, which must be confirmed by one of the members of the medical board, in one of the forms mentioned below, and marked C and D. Should the absence of such officers, when permitted to proceed to sea, and not to Europe, exceed the period for which they may have obtained the sanction of the Governor General in Council, they are to obtain a satisfactory testimonial from the chief medical authority of the presidency, or colony, to which they may have proceeded, that the state of their health rendered such extension of their absence indispensably necessary.

19. The certificates so obtained are to be submitted for the consideration of Government.

*Form of Certificate A. by the surgeon or assistant-surgeon, when a civil servant is obliged to quit the station, from bad health.*

I, A. B. surgeon at the civil station of \_\_\_\_\_, do hereby certify, that C. D. register or \_\_\_\_\_ at \_\_\_\_\_, is in a bad state of health, and I solemnly and sincerely declare, that, according to the best of my judgment, a change of air is essentially necessary to his recovery, and do therefore recommend, that he may be permitted to proceed to \_\_\_\_\_.

A. B. Surgeon at \_\_\_\_\_

\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 181 .

*Form of Certificate B. to be renewed monthly, by the senior surgeon of a dependent station, or at the presidency by the surgeon in immediate attendance on a sick civil servant, and to be confirmed in the latter case, by the superintending surgeon of the presidency, or in his absence, by one of the members of the medical board.*

I, A. B. surgeon at \_\_\_\_\_, do hereby certify, that C. D. register or \_\_\_\_\_ at \_\_\_\_\_, arrived here on the \_\_\_\_\_, in a bad state of health, and I solemnly and sincerely declare, that, according to the best of my judgment, he is still in such a state as to render it improper, that he should yet return to resume the duties of his office.

A. B. Surgeon.

\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 181 .

*Forms of Certificates C. and D. by the surgeon or assistant-surgeon in immediate attendance on a sick civil servant, when such servant may be compelled to proceed to sea, or to Europe, for the benefit of his health. These certificates must be confirmed by a member of the medical board.*

#### FORM C.

I, A. B. surgeon at \_\_\_\_\_, do hereby certify, that C. D. register or \_\_\_\_\_ at \_\_\_\_\_, is in a bad state of health, and I think it highly advisable for him to \_\_\_\_\_.

# ABSENCE FROM STATIONS ; AND

proceed to (the Cape of Good Hope, or as the case may be) by the first opportunity.  
A. B. Surgeon.

, this day of , 181 .

## FORM D.

I, A. B. surgeon , do hereby certify, that C. D. register or  
at , is in a very bad state of health, and that I think a voyage to (the Cape  
of Good Hope, or as the case may be) necessary for his recovery.

A. B. Surgeon.

, this day of , 181 .

20. The rules now established, relative to the deductions to be made from the salaries, or authorized emoluments of civil servants, are to be applied to the cases of all civil servants absent from their stations, either on account of their health, or on account of their private affairs, subsequently to the 1st of January, 1817, whether they may have quitted their stations previously, or subsequently to that date.

21. The Governor General in Council proceeds to advert to that part of the committee's report of the 5th December last, which relates to the extra and deputation allowances, proposed to be granted to civil servants out of employment, when nominated to act in temporary charge of any office, as well as to civil servants, when in charge of other offices than those to which they are permanently appointed.

22. The following is the scale of such allowances, suggested by the committee, which on a consideration of all the circumstances stated by them, not only in their report of the 5th December last, but in that of the 8th ultimo, in reply to the reference made to them in Mr. acting secretary Trotter's letter of the 4th January, the Governor General in Council is pleased to adopt.

*Scale of allowances to be granted to civil servants out of employment, nominated to act in the temporary charge of offices, either at the presidency or elsewhere.*

When acting in offices, the average monthly emoluments of which may be as follows.	Rate of officiating allowance per mensem.	Add subsistence money, according to the rank of the individual.	Total.
Not exceeding Sa. Rs. 1,500	400	Writer or Factor, 162. Junior Merchant, 214.	562 or 644
More than Sa. Rs. 1,500, but not exceeding Sa. 2,800	700	Junior Merchant, 244. Senior Merchant, 325.	944 or 1,025
Exceeding Sa. Rs. 2,800	1,500	Senior Merchant, 325.	1,825

*Scale of extra or deputation allowances to be granted to individuals, when in charge of offices, distinct from those to which they are permanently appointed.*

When acting in offices, the average monthly emoluments of which may be as follows	If the office be at the same station, per mensem.	If at a different station, per mensem.
Not exceeding, per mensem, Sa. Rs. 1,500	Sa. Rs. 150	Sa. Rs. 300
More than Sa. Rs. 1,500, but not exceeding Sa. Rs. 2,800	Sa. Rs. 250	Sa. Rs. 400
Exceeding Sa. Rs. 2,800	Sa. Rs. 350	Sa. Rs. 500

23. The extra allowances specified in the foregoing statements, are intended to preclude all claims on the part of the individual officiating to commission, which is considered to belong to the fixed incumbent, even during his absence, subject of course to the prescribed deductions.

24. The extra and deputation allowances above specified are to be considered appli-

cable to civil servants in every branch of the service, with the exceptions especially provided for below.

25. The Governor General in Council will determine the amount of the extra or deputation allowance to be granted to the persons officiating as secretaries to Government, or as residents at foreign courts, as circumstances may in each instance render advisable. The same course will likewise be pursued when offices may be constituted for the attainment of local or temporary objects, similar to those at present held by the commissioner in Bogree, the commissioner in Behar, &c. &c.

26. When the register of a provincial court, or the assistant to a magistrate, shall be nominated to the charge of the office of register of a zillah or city court, at the same station as that to which he is permanently attached, he is entitled to receive the fees authorized by the regulations on all suits actually decided by himself, as well as the fees for registering deeds, an arrangement which renders any further extra allowance unnecessary.

27. In those cases in which the gentleman appointed to officiate in the situation mentioned under the preceding head, No. 26, may belong to a different station, an extra allowance is to be granted at the rate of 5 rupees per diem.

28. Whenever the services of any of the officers enumerated in the margin,<sup>1</sup> may be required in the interior of their districts, or at any place within the limits of their respective local duties, no extra allowance for travelling, or on any other account, is to be granted.

29. The foregoing rule is not however to be considered applicable to the superintendents of salt chokies, who on the ground of established usage will be authorized to charge, in a contingent bill, the bonâ fide expenses incurred by them in travelling through the extensive tracts of country respectively committed to their superintendence.

30. When registers to provincial courts, or assistants to any of the officers enumerated in the margin,<sup>2</sup> shall be deputed into the interior of the districts to which they are attached, or employed at any place within the limits of their respective local duties, they are to receive an extra allowance at the rate of sa. rs. 5 per diem.

31. When a register or acting register of a zillah or city court shall be deputed or employed in the manner stated under the foregoing head, he is to receive an extra allowance at the rate of sicca rupees 10 per diem.

32. The additional extra allowance stated in the preceding head, No. 31, is intended to compensate for the loss of fees to which the officer so deputed or employed, will be subjected during his absence from his head station.

33. The orders of Government in the judicial department, of the 13th October, 1809, in regard to absentees, are to continue in full effect.

34. These orders direct, that any civil officer, who may obtain leave of absence, shall forward a certificate to the auditor's office, signed by the person to whom he may deliver over charge, and from whom he may again receive charge of his office, specifying the date on which he may have relinquished, and on which he may have resumed, charge respectively.

35. In cases in which it is not necessary, from the nature of the appointment, to depute a civil servant to relieve an officer who has obtained leave of absence, the individual leaving his station is to forward to the auditor a certificate from his immediate superior in office, or if he should have no immediate superior in office, or if circumstances should render it impracticable to obtain such certificate, a notification attested by himself, stating the date of his quitting the station and the date of his return to it.

36. The civil and commercial auditors will be instructed to pass all bills for extra and deputation allowances, provided for by the foregoing rules, without the delay of a reference to Government; and the certificates stated in the preceding paragraphs are to guide them, in regard to the periods during which deductions are to be made from the salaries of absentees, and in respect to the dates from which the extra and deputation allowances are to commence, and the periods when they are to cease.

37. The rules now established, in regard to extra and deputation allowances, are to take effect from the present date.

38. Under the explanations furnished in the committee's reports, the Governor Ge-

<sup>1</sup> A judge or magistrate of a zillah or city court—a collector of land revenue or of customs—a commercial resident—a salt agent or his assistant—an opium agent or his deputy.

<sup>2</sup> A magistrate—a collector of land revenue—ditto customs—an opium agent—a commercial resident.



neral in Council entertains a confident hope, that the deductions which they have proposed to be made from the salaries of absentees, and the other sources of supply, which they have, on fair and equitable principles, suggested may be carried to the credit of the fund now established, will be fully sufficient to defray in future the expense which has hitherto fallen on the Honorable Company, of providing officers to discharge the duties of such absentees. But while on the one hand it is proper, that public officers should not be subjected to a higher charge than may be necessary to defray that expense, it is on the other hand entirely consistent with the spirit of the present resolutions, that if the prescribed deductions shall not prove adequate to the object in view, the scale of them should be increased to such an extent as may be necessary for this purpose.

39. In order, therefore, to enable Government to form a correct judgment on this point, His Excellency the Governor General in Council is pleased to direct, that the civil and commercial auditors be instructed to submit to Government, as soon after the 30th of April in each year (commencing with April, 1818) as may be conveniently practicable, a statement for the past official year, showing—

1st, The total amount of the fund realized in their respective departments, by the authorized deductions from the allowances of absentees; by the interest, calculated at the rate of the Government loans, accruing on the arrears of those allowances retained in the public treasuries; and by the forfeiture, from the period of their departure, of the salaries of those civil servants, who may go to sea on leave of absence, but who may die or be compelled to proceed to England, without returning to the presidency.

2d, The total amount of the expenses actually incurred, whether for extra or deputation allowance, or for travelling charges, in providing substitutes for public officers absent from their stations, from indisposition, or on account of their private affairs.

40. In cases in which the officer deputed to officiate for an absentee may be ultimately confirmed in the appointment, the Governor General in Council is of opinion, that the expense of travelling charges originally incurred for the officer first mentioned, when proceeding to join the station, should not be debited to the fund, but be considered as connected with the permanent appointment,—it being an expense which it would at all events have been necessary for Government to incur.

41. The Governor General in Council will determine in each particular case, whether the principle of the foregoing rules, both in regard to the deductions to be made from the salaries of absentees, and in respect to the scale of allowances to be granted to persons officiating for such absentees, shall be applied to persons not attached to the civil and military branches of the service, who may hold appointments under this Government.

42. The accounts of the deductions made from the salaries of these officers, and of the expense incurred in providing substitutes to perform their duties, should be kept by the civil and commercial auditors, distinct from the statements they have been required by the foregoing rules to furnish annually to Government, in respect to the civil service."

*Records and Reports.*

For the purpose of preventing injury to public or private rights, or property, by the loss, destruction, or removal, of the records of the courts of judicature; as well as with a view to facilitate the means of reference to them on all occasions requiring it; two native keepers of the records are appointed for each of the zillah and city courts, civil and criminal; the provincial courts of appeal and circuit; and the courts of sudder dewanny adawlut and nizamat adawlut. They are to keep a register, in the Persian and Bengal languages in Bengal and Orissa, and in the Persian and Hindoostanee languages in the other provinces, of all the dewanny and foudarry proceedings, documents, and other records of the courts to which they may be respectively attached, in a book to be attested by the official signature of the registers or assistants; and are to see that the judicial records of the courts, committed to their care, are not destroyed by insects, damp, or otherwise; as well as that they are not removed without the orders of the courts. For any neglect of this duty; or if any records, entered in their registers, shall not be forthcoming, and they shall not be able to give a satisfactory account of them; they are liable to dismission from their offices. The several courts of civil justice are likewise required to keep a book of daily proceedings, in which every order or act of the court is to be minuted, in the languages above specified; with references to the pleadings, depositions, exhibits, and other papers read and filed in each cause; and to be attested with the signature of the judge; or in the provincial courts and sudder dewanny adawlut with the signature of the register.<sup>1</sup> For the information of the latter courts, the zillah and city judges are directed to furnish a monthly report of causes decided, by themselves, their registers, and the native commissioners in their respective jurisdictions. Also a half yearly report of depending causes; to be transmitted in abstract only on the 1st July; but with a Persian detail, on the 1st January of each year, and an explanation of the reasons which may have prevented the decision of any causes included in a former half yearly report. Similar monthly and half yearly reports are required to be furnished by the provincial courts of appeal. And an abstract of the whole, including the causes decided by, or depending before, the sudder dewanny adawlut, is prepared by the register of that court; and submitted, with the court's remarks and orders upon the reports of the provincial, zillah, and city courts, for the information of the Governor General in Council.<sup>2</sup>

R. 18 1793, extended to Benares by R. 18, 1795; R. 37, 1795; R. 13, 1803. Rules for preserving records of the courts of judicature. Appointment of record keepers and their duties.

Penalty for neglect of duty. Book of daily proceedings to be kept by each court.

Monthly report of decided causes. And half yearly report of depending causes.

<sup>1</sup> The book of daily proceedings for causes tried by the registers to the zillah and city courts, and for all orders passed or acts done by them, in their judicial capacity, is also, of course, to be kept and attested by the register.

<sup>2</sup> The printed circular orders of the court of sudder dewanny adawlut, under the head of *Reports*, contain full instructions to the zillah, city, and provincial courts, relative to the periodical reports which are now required to be furnished by those courts respectively. It will be sufficient therefore to notice, in this place, that, on the 14th September, 1815, with a view to bring the monthly reports of civil causes decided in the zillah and city courts, as well as the half yearly reports of causes depending in those courts, under the inspection, in the first instance, of the provincial courts, the several zillah and city judges were directed to transmit their future reports to the sudder dewanny adawlut through the provincial court of the division. The provincial courts were, at the same time, instructed, on receipt of the prescribed monthly and half yearly reports from the zillah and city judges, to examine them with attention; and call for any explanation that may be wanting under the regulations, or the circular orders of the sudder dewanny adawlut. After receiving the required explanations (which are to be furnished with the least practicable delay) the reports and explanations are to be forwarded by the provincial courts to the sudder dewanny adawlut, "accompanied by

## RECORDS AND REPORTS.

any observations which may appear requisite for the information of the sudder dewanny adawlut, and of Government; as well as any suggestions of a general nature, or relative to the state of business in any particular court, which may be deemed expedient, with a view to expedite the decision of an arrear of civil causes, or for any purpose connected with the more efficient administration of civil justice." The latest reports of depending civil causes, which can be immediately referred to, are those contained in a letter from the court of sudder dewanny adawlut to the vice-president in council, bearing date the 29th March, 1818. In par. 193 of that letter it is stated that the total number of depending original suits and appeals on the 1st January, 1817, was as follows:—

Before the zillah and city judges . . .	12,387
Before the registers . . . . .	8,339
Before the sudder ameens . . . . .	29,041
Before the moonsiffs . . . . .	38,730
In the provincial courts . . . . .	3,581
In the sudder dewanny adawlut . . . .	442
<b>Total . . . . .</b>	<b>92,520</b>

The court of sudder dewanny adawlut, after noticing that the above total, compared with the aggregate arrear of depending causes on the 1st January, 1813, (viz. 142,406) exhibited a reduction, in the last four years, of 49,886; add the following paragraph (134.):—"The entire number of depending causes must still appear formidable, if reference be not made to the annual number determined or adjusted. But the statements of actual decisions, nonsuits, and adjustments, in the years 1813, 1814, 1815, and 1816, which were submitted to Government on the 4th June last, show that the total number disposed of, in each of those years, was as follows:

<b>In 1813.</b>	By zillah and city judges and assistant judges . . . . .	8,208
	By registers . . . . .	7,585
	By sudder ameens . . . . .	22,602
	By moonsiffs . . . . .	136,200
	By provincial courts . . . . .	1,123
	By sudder dewanny adawlut . . . . .	72
	<b>175,795</b>	
<b>In 1814.</b>	By zillah and city judges and assistant judges . . . . .	6,070
	By registers . . . . .	7,833
	By sudder ameens . . . . .	22,671
	By moonsiffs . . . . .	127,471
	By provincial courts . . . . .	1,096
	By sudder dewanny adawlut . . . . .	69
	<b>165,210</b>	
<b>In 1815.</b>	By zillah and city judges . . . . .	5,744
	By registers . . . . .	8,953
	By sudder ameens . . . . .	26,702
	By moonsiffs . . . . .	93,947
	By provincial courts . . . . .	1,106
	By sudder dewanny adawlut . . . . .	85
	<b>138,537</b>	
<b>In 1816.</b>	By zillah and city judges . . . . .	6,618
	By registers . . . . .	12,066
	By sudder ameens . . . . .	38,922
	By moonsiffs . . . . .	72,055
	By provincial courts . . . . .	1,131
	By sudder dewanny adawlut . . . . .	108
	<b>130,900</b>	
<b>Total of four years . . . . .</b>		<b>608,442</b>
<b>Annual average . . . . .</b>		<b>152,110"</b>

The stated diminution in the number of suits disposed of during the years 1815 and 1816, compared with 1813 and 1814, is chiefly ascribable to the abridged jurisdiction of the moonsiffs, under the provisions of Regulation 23, 1814, which were in force from the 1st February, 1815."

*Superintendent and Remembrancer of legal Affairs.*

The office of superintendent and remembrancer of legal affairs was instituted on the 29th March, 1816, for the reasons stated in the following preamble to Regulation 8, 1816, passed on that date.

“The duty of determining on the propriety of instituting or defending, on the part of Government, original suits or appeals in the several courts of civil judicature, rests under the existing regulations with the Governor General in Council, and with the several boards, acting under his authority in different departments. With a view to afford further facilities in the discharge of a duty which so materially involves the reputation as well as the interests of the Government, it is deemed advisable that an officer should be appointed, who, in the quality of superintendent and remembrancer of legal affairs, may aid the said authorities in such manner as may, on experience, be deemed most convenient, as well in the conduct of important suits and appeals when instituted, as generally in deciding on the propriety of having recourse to the established courts of justice for the recovery or maintenance of the rights and interests of Government. It is conceived also, that the public convenience will be in other respects promoted by the appointment of an officer of this description, whose services may, in certain cases of more than ordinary importance, be available in matters of a criminal as well as of a civil nature; and who may be employed by Government in the conduct of other judicial concerns, in any mode not inconsistent with the existing regulations. The following rules have accordingly been enacted, to be in force from the date of the promulgation of this regulation throughout the whole of the provinces immediately subject to the presidency of Fort William.” § 2. “A covenanted servant of the Company shall be appointed to the office of superintendent and remembrancer of legal affairs.” § 3. “It shall be competent to the Governor General in Council to avail himself of the services of the superintendent and remembrancer of legal affairs in the maintenance of the public interests, by directing him to furnish such aid in the conduct of cases in which Government may be concerned, in the civil or criminal courts of justice, as may be deemed advisable.” § 4. “It shall moreover be the immediate duty of this officer to furnish an opinion on the merits of any case that may be referred to him for the purpose, either by the Government or by any other authority duly authorized by this regulation; distinguishing clearly in each case whether the determination of the depending question rests upon matter of fact, or upon the provisions of the regulations of the British Government, or lastly upon the principles of the Hindoo and Mahomedan laws. In the last mentioned case, it shall be the duty of the superintendent and remembrancer uniformly to consult the proper law officer attached to the sudder dewanny adawlut, and nizamat adawlut, previously to submitting his opinion on the subject.” § 5. “In carrying into effect the provisions of the second and third clauses of Section 3, Regulation 2, 1814,<sup>1</sup> and previously

Reasons for instituting the office of superintendent and remembrancer of legal affairs, stated in preamble to Regulation 8, 1816

Rules enacted accordingly  
Section 2  
A covenanted servant to be appointed to the office.  
Section 3.  
The superintendent and remembrancer is to furnish such aid in the conduct of cases in which Government may be concerned, as may be deemed advisable.  
Section 4.  
And to furnish an opinion on the merits of any case that may be referred to him for the purpose by the public authorities duly authorized by this regulation.  
Section 5  
In what cases the several boards or other

<sup>1</sup> These clauses are cited at length in the second volume of this Analysis, p. 423. They provide, in substance, for redress being granted to persons complaining of official acts, done by a collector of the land revenue or customs, a commercial resident, salt agent, opium agent, or other public officer amenable to the civil courts, when the superior authority in each department may be of opinion that the party complaining has been aggrieved, and is entitled to redress.

public authorities may avail themselves of the services of the superintendent and remembrancer of legal affairs. Section 6.

Reg. 27, 1814, § 37, c. 3, declared applicable to the superintendent and remembrancer of legal affairs. Section 8. Suits instituted under Clause 4, Section 3, Reg. 4, 1814, how to be entered on the file.

to determining on the propriety of authorizing a recourse to judicial process, the board of revenue, the board of commissioners in the ceded and conquered provinces, the commissioner in Behar and Benares, and the board of trade, are authorized to call for the sentiments, and to avail themselves of the assistance, of the superintendent and remembrancer of legal affairs, in such manner as they may deem expedient, under the instructions which may be communicated to them for that purpose by the Governor General in Council." § 6. "The provisions of Clause third, Section 37, Regulation 27, 1814,' are hereby declared to be equally applicable to the superintendent and remembrancer of legal affairs as to the other officers and authorities adverted to in that clause." § 8. "In cases in which a party preferring a petition of complaint against a collector of the land revenue, or of customs, or against a commercial resident, or other person amenable to the courts of civil judicature, for acts connected with his official duties, may not be considered entitled to redress from Government, under the provisions of Clause third, Section 3, Regulation 2, 1814; and who may consequently, under the fourth clause of that section, proceed to prosecute the case in the regular course of law; such suit shall be entered on the file of the court, from the date on which the petition was originally received, and the case shall be brought to a hearing and determination, in the order in which it would have been heard and determined, had it been originally instituted on such date."

### *Special Provisions for Zillah Cuttack.*

Provisions for civil and criminal justice in foreign settlements whilst under the British Government, have been superseded by restoration of those settlements. Special provisions relative to zillah Cuttack, in R. 11, 1816. Preamble to that regulation.

The provisions for administering civil and criminal justice in the foreign settlements of Chandernagore, Chinsurah, and Serampore, which were enacted whilst those settlements remained subject to the authority of the British Government, and were consequently stated in the first edition of this Analysis, have been since superseded by the restoration of the whole of these settlements to the French, Dutch, and Danish governments, respectively. But, in concluding the present section, it will be proper to state the special provisions which have been enacted relative to zillah Cuttack, and first those contained in Regulation 11, 1816, "for receiving, trying, and deciding claims to the right of inheritance, or succession, in certain tributary estates in zillah Cuttack."

The preamble to that regulation states the grounds of it, as follows:— "Whereas it is necessary that provision should be made for receiving, trying, and deciding claims to the right of inheritance or succession in certain tributary estates in zillah Cuttack, which were excepted by Section 11, Regulation 14, 1805,<sup>1</sup> from the operation of the general rules for the administration of civil justice, established in the provinces of Bengal, Behar, and Orissa; and whereas the nature of the tenures by which those estates are held, the character of the inhabitants, and other local circumstances, render it expedient that the estates in question should not be subject to partition, but should

<sup>1</sup> See preceding title of *Vakeels, or Native Pleaders*. It may be further noticed, that Section 7, of the regulation here quoted, has been also stated, under that title, as modifying the Second clause of Section 36, R. 27, 1814, relative to the nomination and appointment of the vakeels of Government in the courts of justice.

<sup>2</sup> See notice of this section, under the head of *Zillah and City Civil Courts*, p. 30. The tributary estates excepted from the general regulations by Section 11, R. 14, 1805, are those specified in Section 2, of the present regulation.

descend entire and undivided, to the persons respectively having the most substantial claim according to local and family usage; the following rules have been enacted to be in force from the date of the promulgation of this regulation, in zillah Cuttack." § 2. "All claims to the right of inheritance, or succession, to any of the undermentioned tributary estates, are to be heard, tried, and determined, in the first instance, by the superintendent of the tributary mohauls in zillah Cuttack.

Section 2.  
Claims to the right of inheritance or succession to certain tributary estates in Cuttack how to be tried.

Killah - Neelgery,  
Ditto - Bankey,  
Ditto - Joormoo, alias Duspullah,  
Ditto - Nursingpore,  
Ditto - Angole,  
Ditto - Talcher,  
Ditto - Autgurh,  
Ditto - Keonjur,  
Ditto - Kindeaparah,  
Ditto - Neahgurh,  
Ditto - Rampore,  
Ditto - Hindole,  
Ditto - Teegereah,  
Ditto - Burumbah,  
Ditto - Dekenal.

The territory of Mohurbunge."

§ 3. "The superintendent in deciding cases of the above nature, shall be generally guided by the established laws and usages of the respective tributary estates. Provided however, that the estates above enumerated shall in no case be considered liable to be divided according to the Hindoo law, but shall descend entire to the person having the most substantial claim according to local and family usage." § 4. "The superintendent is prohibited from taking cognizance of any suit, the cause of action in which shall have arisen antecedent to the 14th day of October, 1803, the date on which the fort and town of Cuttack were surrendered to the British arms."

Section 3.  
On what laws and usages such claims are to be decided. Proviso.

Section 4.  
Suits not cognizable, if the cause of action arose before the 14th of October, 1803.

Section 5.  
The pleaders of the civil court are to attend the superintendent's court, and entitled to fees.

Section 6.  
The Hindoo law officer of the zillah court is to expound the law when requisite.

Section 7.  
Rules regarding the issuing of processes by the superintendent.

Section 8.  
Rule to be observed by the superintendent in the trial of all suits instituted under this regulation.

Section 9.  
Stamp paper shall not be required in these suits.

§ 5. The established pleaders of the zillah court shall attend the superintendent's court, to be held in the court house of the zillah adawlut; and they shall receive the same fees as are authorized on the pleading of causes in the zillah courts; subject of course to the prescribed rules in the cases of paupers." § 6. "The Hindoo law officer of the zillah court is to expound the Hindoo law, in all cases wherein it may be requisite for the due determination of causes pending before the superintendent." § 7. "All processes issued in suits instituted under this regulation shall bear the official seal and signature of the superintendent; and shall be executed by the officers on his establishment, in like manner as all similar processes issued by the judge of the zillah court are executed; and any disobedience and resistance to his process shall be liable to a fine to Government to be fixed by the superintendent, subject to the confirmation of the court of sudder dewanny adawlut; or, if the offender be a landholder or sudder farmer, and the case appear to call for it, by a confiscation of his estate or farm; commutable to a fine by the sudder dewanny adawlut, or Governor General in Council." § 8. "In the trial of all suits instituted under this regulation, the superintendent shall be guided by the general rules prescribed for the trial of civil causes, before the judges of the zillah courts, subject to the special provisions contained in this regulation, or in points not specially provided for, to any qualification of the general rules, which may be found expedient, and may be sanctioned by the court of sudder dewanny adawlut." § 9. "It shall not be requisite to use stamp paper for the complaints, pleadings, decrees, or any papers relative to

Section 10.  
Deposit to be  
made on ac-  
count of the  
pleader's fee.

Exceptions in  
cases of pau-  
pers.

Section 11.  
An appeal  
may be made  
from the su-  
perintendent's  
decision to the  
sudder dewanny  
adawlut.

Section 12.  
Rules to be  
observed on  
admitting a  
petition of ap-  
peal.

Section 13.  
Duty of the  
superintend-  
ent on re-  
ceipt of a pe-  
tition of ap-  
peal.

Section 14.  
Course to be  
pursued if the  
petition of ap-  
peal be admit-  
ted by the  
sudder dewanny  
adawlut. The super-  
intendent to  
comply with  
the exigency  
of precepts  
of the sudder  
dewanny ad-  
awlut.

Section 15.  
The parties  
may plead  
their own cau-  
ses in appeal,  
or may appoint  
vakeels, or may  
deliver their  
proceedings to  
the superin-  
tendent of the  
tributary Me-  
hals.

Section 16.  
The sudder de-  
wanny adaw-  
lut may either  
refer the cause  
back to the su-  
perintendent,  
or direct fur-  
ther evidence.

Section 17.  
The provisions  
of Section 3,  
declared ap-  
plicable to the  
decisions pas-  
sed by the su-  
dder dewanny  
adawlut.

Section 18.  
Also the prin-

suits instituted under this regulation, nor shall any durkhaust on stamp paper be required for the admission of exhibits, or the issue of summonses to witnesses, in such suits, when tried in the first instance, or in appeal." § 10. "When the plaintiff or defendant may appoint a pleader, to prosecute or defend a suit, under this regulation, he shall deposit in the court a sum equal to the amount of the pleader's fee; unless from the oath, or solemn declaration of the party, or from the evidence of two credible witnesses, the superintendent shall be satisfied of the inability of the plaintiff, or defendant, to make such deposit; in which case he shall be admitted as a pauper, and the stated deposit shall not be required." § 11. "In all suits decided and orders passed by the superintendent under this regulation, an appeal from his decisions and orders shall lie to the court of sudder dewanny adawlut, provided that the petition of appeal be preferred within three months after the decree or order appealed from, shall have been passed." § 12. "The petition of appeal shall be presented to the superintendent, and shall contain a full and explicit statement of the appellant's objections to the decree or order from which he is desirous to appeal. The appellant if not admitted as a pauper under Section 10, shall, at the same time, tender good security for the payment of any costs which may be adjudged on the determination of the appeal by the sudder dewanny adawlut; or if unable to give such security, shall make oath or subscribe a solemn declaration to his inability, or adduce two creditable persons to prove the same." § 13. "On receipt of the petition of appeal, with the prescribed security, or proof of inability required in failure thereof, the superintendent shall cause a copy to be made of the decree or order from which the appeal may be required, and within fifteen days shall certify and transmit the same, with the petition of appeal, to the court of sudder dewanny adawlut." § 14. "First.—When the court of sudder dewanny adawlut may admit the appeal, they will cause a precept to be issued under the seal of the court, and the signature of the register, addressed to the superintendent, requiring him, within such period as may be limited by the precept, to furnish a complete record of all papers received, and proceedings held in the case; and also to call upon the respondent or respondents for his or their answer; or to appear in person or by vakeel, within a certain time before the sudder dewanny adawlut, and deliver his or their answer to that court." *Second.* The superintendent on receipt of the precept shall comply with the exigency thereof, as required; or in the event of his not being able to carry the same into complete execution within the prescribed period, shall certify the same to the court of sudder dewanny adawlut, with notice of the period within which a further return will be made." § 15. "It shall be optional with appellants and respondents in appeals to the sudder dewanny adawlut, under this regulation, to attend in person, or by vakeel, for the prosecution or defence of their appeals before that court; or to deliver their proceedings to the superintendent of the tributary Mehals; who, in the latter case, shall forward them, as soon as received, to the sudder dewanny adawlut, and communicate to the parties any orders which may be issued by that court." § 16. In cases wherein it may appear to the court of sudder dewanny adawlut, that the cause in appeal has not been sufficiently investigated, and consequently that further evidence is required for the just determination of it, that court is empowered to refer the cause back for further trial and judgment to the superintendent; or to direct that further evidence be taken and transmitted to the court." § 17. The provisions contained in Section 3, by which the decisions passed by the superintendent are to be governed, shall be considered equally applicable to the decisions of the sudder dewanny adawlut in all appeals under this regulation." § 18. "The principles of the several provisions contained in Sections 4, 5,

6, 8, 9, and 10, of this regulation, shall also be considered applicable to all appeals from decisions or orders of the superintendent of the tributary Mehals in zillah Cuttack, which may come before the court of sudder dewanny adawlut." § 19. "*First*. In cases of appeal to the sudder dewanny adawlut, from any decree or order of the superintendent involving a transfer of property, or any change in the actual possession of property, the decree or order appealed from shall not be carried into execution during the appeal to that court, provided the appellant shall give good and sufficient security for the performance of the final decision, which may be passed upon the appeal; and in no instance shall the superintendent cause to be carried into execution any such decree or order passed by him, until the period allowed for the appeal may have elapsed. *Second*. In the event of the appellant's not giving security for staying the execution of the decree appealed from, and of its being consequently put into execution whilst an appeal is pending, good and sufficient security shall be taken from the respondent for the performance of the final decision which may be passed upon the appeal. *Third*. In case neither party shall be able to give the requisite security, the estate in dispute shall be attached by order of the superintendent, until the security required shall be received, or until the final determination be passed by the sudder dewanny adawlut upon the case. *Fourth*. No decree or order, whether of the superintendent of the tributary Mehals, or of the sudder dewanny adawlut, involving a transfer of the property or an actual change in the possession of any of the estates enumerated in Section 2, of this regulation, shall be carried into execution, without a previous communication being made by the sudder dewanny adawlut to Government; in order that sufficient time may be afforded for the adoption of any precautionary measures which may be eventually judged requisite to support and enforce the execution of the decree or order without hazard to the public tranquillity." § 20. "*First*. The judgments of the sudder dewanny adawlut shall be final and conclusive in all appeals heard and determined by that court under this regulation, within the limitation of appeals to the King in Council, prescribed by the Statute 21, George III. Cap. 70, Section 21 viz. five thousand pounds or sicca rupees 43,103. *Second*. If the amount or value adjudged shall, exclusive of costs of suit, exceed the sum of £5,000, or sicca rupees 43,103, a further appeal will be open to His Majesty in Council; and shall be received by the sudder dewanny adawlut, under the provisions which have been enacted for receiving such appeals in Regulation 16, 1797."

Considerations connected with recent disturbances in Cuttack, having rendered it expedient that the officer discharging the functions of judge and magistrate of Cuttack should, for the present, be vested with authority to remove the native ministerial officers attached to the judicial establishment of that district, and to appoint individuals to succeed to vacant offices on his establishment, without applying for the previous sanction or confirmation of the provincial court of appeal and circuit for the division of Calcutta; the following rules were passed in Regulation 22, 1817, to take effect from the promulgation of that regulation.

§ 2. "*First*. Such parts of the existing regulations as require that the provincial court of appeal and circuit shall confirm the appointment, removal, and resignation of certain native ministerial officers, including the record keepers, moonsiffs, and sudder ameens, employed under the authority of the zillah and city judges and magistrates, shall not have effect in the zillah of Cuttack. *Second*. The officer discharging the functions of judge and magistrate of Cuttack, is hereby vested with full authority to remove and appoint, or to accept the resignations of the officers above alluded to, without

principles of Sections 4, 5, 6, 8, 9, and 10, of this regulation.

Section 19. Execution of the decree passed by the superintendent to be postponed if the appellant shall give sufficient security.

If appellant fail to give security the decree shall be executed, provided the respondent give sufficient security.

In case neither party shall be able to give the requisite security the estate shall be attached.

Previous to the execution of any decree, a communication must be made to Government.

Section 20. To what amount the decisions of the sudder dewanny adawlut shall be final. An appeal to the King and Council may be made in certain cases.

Preamble to Regulation 22, 1817.

Section 2. Rules regarding appointment and removal of native officers by court of circuit, not to have effect in Cuttack. The judge and magistrate of Cuttack vest-



ed with power to remove and appoint, or to accept such officers.  
Further provisions for appointment of a commissioner in zillah Cuttack.  
Preamble to Regulation 5, 1818.

the previous sanction of the provincial court of appeal and circuit for the division of Calcutta.<sup>1</sup>

The following further provisions for the appointment of a commissioner, to be vested with special powers in the administration of civil affairs in zillah Cuttack, were passed on the 28th April, 1818; and included in Regulation 5, 1818. "Whereas considerations connected with the present state of the district of Cuttack, and with the nature of the disturbances which recently prevailed in various parts of that district, have rendered it expedient that a commissioner should be deputed for the temporary superintendence of the civil affairs of the said district; and whereas it is necessary, with a view to the prompt and effectual execution of the important duties assigned to the commissioner, that he should be vested with special powers as well in the administration of civil and criminal justice, as in the superintendence of other local duties hitherto conducted by the boards of revenue and trade; the Vice-President in Council has been pleased to enact the following rules, to be in force within the local limits of the district of Cuttack, from the date on

Section 2.  
The powers exercised in Cuttack by the boards of revenue and trade, the provincial court of Calcutta, and the local committee for superintending the embankments, are suspended.  
Section 3.  
A commissioner to be deputed to Cuttack, with special powers.

Section 4.  
Judge of circuit holding the jail delivery at Cuttack, to complete the duties of the present sessions.  
Commissioner in Cuttack, to hold the future sessions of jail delivery of that district.  
Section 5.  
Civil suits depending in the provincial court of Calcutta to be transferred to the commissioner.  
And may be tried by him at any place within the limits of Cuttack.  
The pleadings not required to be conducted by regular pleaders.

which the commissioner may assume the charge of his office." § 2. "The provisions of the existing regulations, by which the board of revenue, the board of trade, the provincial court of appeal and circuit for the division of Calcutta, and the local committee for superintending the embankments, are respectively authorized or directed to exercise any powers or functions, or to discharge any duties in the administration of the civil affairs of the district of Cuttack, are hereby suspended." § 3. "A commissioner shall be deputed to the district of Cuttack, who shall be authorized, from the date on which he may assume the charge of his office, to exercise and discharge the whole of the powers and duties heretofore exercised and discharged with regard to the affairs of that district, under the regulations in force, by the board of revenue, by the board of trade, by the judges of the provincial court of appeal for the division of Calcutta, either individually or collectively, and by the judges of the court of circuit for the division of Calcutta, either individually or collectively, and by the local committee of embankments." § 4. "The foregoing provisions shall not operate to prevent the judge of circuit, who is now holding the sessions of jail delivery of the zillah of Cuttack, from completing that duty under the regulations heretofore in force; but from and after the completion of the present sessions, the sessions of jail delivery of the zillah of Cuttack shall be held from time to time by the commissioner, at such periods as he may judge most expedient for the public service." § 5. "First. The records of civil suits of every description, originating in the district of Cuttack, which may be depending before the provincial court for the division of Calcutta, whether in appeal from the decision of the zillah court of Cuttack, or instituted in the first instance in the provincial court, shall be transferred to the commissioner; and such cases, as well as all other civil cases coming under his cognizance, shall be investigated and decided by him, at any place or places situated within the limits of the district of Cuttack, under the same powers as are vested in the judges of the provincial court, either individually or collectively. Second. The pleadings and the management of suits which may be brought under the cognizance of the commissioner in Cuttack, shall be conducted, either by the parties themselves, or by agents duly authorized by them for that purpose; and it shall not be requisite that any regular pleaders should be attached to the court of the commissioner, or that any duties in the court of the com-

<sup>1</sup> This clause has been rescinded by Section 7, of R. 5, 1818, cited in the Sequel: but is here inserted, as introductory to that regulation.

missioner should be performed by such pleaders. *Third.* The commissioner in Cuttack, shall be empowered to dispense with the rules contained in Sections 3, 4, 5, 6, and 7, Regulation 28, 1814, in all instances in which he may judge it expedient to permit persons to sue, either in his own court, or in the zillah court of Cuttack, as paupers, without requiring such persons to fulfil the conditions specified in those sections. *Fourth.* The commissioner in Cuttack, and the judge and magistrate of that district, shall also be respectively empowered to dispense with the rule contained in Section 19, Regulation 28, 1814, in all instances in which they may judge it expedient. *Fifth.* The orders and decisions passed by the commissioner, in original civil suits, or in appeals cognizable by him, whether regular or summary, shall be to all intents and purposes final and conclusive—Provided however, that an appeal shall lie to the sudder dewanny adawlut, from the decisions of the commissioner on civil suits, which from their amount or value may be appealable to the King in Council, under the provisions of the existing regulations.” § 6. “Nothing contained in this regulation, shall be construed to affect or alter the powers vested in the court of nizamat adawlut, with regard to the administration of criminal justice in the district of Cuttack; and the commissioner in Cuttack will stand in the same relation to the court of nizamat adawlut, as the judges of the provincial court of circuit for the division of Calcutta have hitherto stood, either in their individual or in their collective capacity.” § 7. “The provisions of Regulation 27, 1817, are hereby rescinded; and the commissioner in Cuttack shall exercise the same powers in confirming the appointment and removal of the native officers of the judge and magistrate of Cuttack, as are exercised by the provincial courts of appeal and circuit, with regard to the appointment and removal of the native officers on the establishment of the zillah judges and magistrates generally.” § 8. “The judge and register of zillah Cuttack are hereby empowered to hold their court for the investigation of summary suits, regarding rent or dispossession from lands, in any part of the district of Cuttack; and it shall be competent to the commissioner, with the sanction of the Governor General in Council, to employ the registers or the assistants to the judge and magistrate of Cuttack, on local duties in the territorial department, when such employment shall appear calculated to promote the public service.”

<sup>1</sup> See the whole of the rules contained in R. 28, 1814, under the title of *Judicial fees*; and *exemption of paupers*.

The commissioner may dispense with rules in Sections 3, 4, 5, 6, and 7, R. 28, 1814, respecting paupers. Also with the rule contained in Section 19, R. 28, 1814.

Orders and decisions by the commissioner in civil suits, to be final. Except in cases appealable to the King in Council. Section 6. Powers of nizamat adawlut regarding criminal justice, to continue in force.

Section 7. R. 27, 1817, rescinded. Commissioner to confirm appointment and removal of native officers of judge and magistrate. Section 8. Judge and register may investigate summary suits in any part of Cuttack. Registers and assistants may be employed on local duties in the territorial department.

## SECTION III.

### SUBJECTS CONNECTED WITH CIVIL JUSTICE.

#### LOANS, INTEREST, AND MORTGAGES.

General principles of laws of interest and usury.

Mahomedan law respecting interest.

Hindoo law.

TO promote the circulation of money, and encourage commerce, it has, in almost all countries, been deemed expedient to sanction by law the receipt of a just consideration for the use of money, proportioned to its actual value or price; which depends upon the quantity of current specie and the general demand for it; and to the risk incurred in lending it; subject to penalties for excessive and illegal interest, or, as commonly denominated, usury.<sup>1</sup> But the Mahomedan law, which in this and other instances is borrowed from the Mosaic, forbids the taking of interest for the use of money, upon loans from one Musulman to another, and has not regulated the rate of it, when allowed to be taken from a hostile infidel.<sup>2</sup> The Hindoo law permits interest to be taken (with some exceptions) and has prescribed the rates to be received with, or without, a pledge, or surety. But the legal rates vary according to the cast, or class, of the borrower; as well as under other circumstances of time and place; and a considerable difference of construction has been given, by the commentators upon the Hindoo law of contracts, to

<sup>1</sup> Vide Blackstone, Vol. II. page 454. He remarks "that the exorbitance or moderation of interest for money lent depends upon two circumstances; the inconvenience of parting with it for the present, and the hazard of losing it entirely. The inconvenience to individual lenders can never be estimated by laws; the rate therefore of general interest must depend upon the usual or general inconvenience. This results entirely from the quantity of specie or current money in the kingdom." But in this case, it seems to be the general demand for money, by those who want it; rather than the inconvenience of parting with it, to those who possess it; which regulates, or ought to regulate, the rate of legal interest. It has been questioned indeed whether any limitation of interest should, in policy, be fixed by law; but the laws of England have made the lender at illegal interest liable to a penalty of treble the amount of the sum lent; besides declaring void all usurious bonds, contracts, and assurances; and their commentator, distinguishing "between a moderate and exorbitant profit; to the former of which we usually give the name of interest; to the latter the truly odious appellation of usury," observes that "the former is necessary in every civil state, if it were but to exclude the latter, which ought never to be tolerated in any well regulated society."

<sup>2</sup> See Hamilton's translation of the Hedaya, Vol. II. chapters on "*Ribba* or usury" and "*sirf* sales."

the texts which respect the limitation of interest, and the invalidity, or immorality only, of usurious loans and engagements.<sup>1</sup> Moreover, the Hindoo legislators have expressly sanctioned, and the Musulman governments of India appear to have tolerated, directly or indirectly, the *customary interest* of the country; which, in the plan for the administration of justice proposed by the committee of circuit in the year 1772, is stated to "have amounted to the most exorbitant usury." It was therefore judged necessary to prescribe a fixed and general rule for the limitation of interest, to be received and paid, in all cases of loan and debt; and the eighteenth article of the plan above-mentioned established the following rates, "as well for past debts, as on future loans of money; viz. on sums not exceeding one hundred rupees principal, an interest of three rupees two annas per cent. per mensem, or half an anna in the rupee: on sums above one hundred rupees principal, an interest of two rupees per cent. per mensem. The principal and interest to be discharged according to the condition of the bond: and all compound interest, arising from intermediate adjustments of accounts, to be deemed unlawful and prohibited." It was further provided (by the 18th and 19th articles) that "when a debt is sued for upon a bond, which shall be found to specify a higher interest than the established rates, the interest shall be wholly forfeited to the debtor, and the principal only be recoverable; and that all attempts to elude this law, by deductions from the original loan under whatever denomination, shall be punished by a forfeiture of one moiety of the amount of the bond to Government and the other half to the debtor." Also that "all bonds shall be executed in the presence of two witnesses." These provisions were continued in the 22nd and 23rd articles of the judicial regulations passed on the 28th March, 1780, with the following qualifications. "In cases of future loans, no higher interest to be allowed than two per cent. per mensem, or twenty-four per cent. per annum, where the principal shall be under one hundred rupees; and one per cent. per mensem, or twelve per cent. per annum, where the principal shall exceed one hundred rupees. It shall be further in the discretion of the superintendent of the dewanny adawlut, in cases of past loans, on a review of the circumstances of the debt, and condition of the debtor, to settle the payment of the debt according to a known and established custom of the country; namely, where the interest has accumulated so as to exceed the principal, to reduce it to one half of the principal, or where the interest has exceeded one half of the principal to reduce it to a quarter. That all bonds shall in future be executed in the presence of two subscribing witnesses; this is not however to apply to bills of exchange, receipts, or notes of hand, in which the custom of the country is to be referred to and abided by." Provisions to the same effect, with a modification to admit of a judgment upon bonds, though not proved by two witnesses, on proof of payment of the amount, or the receipt of some other valuable consideration, were included in the 21st, 22d, and 25th articles of the regulations of the 5th July, 1781, and in the 15th article of the printed supplement thereto, it is stated, that "the judge of the mofussil dewanny adawlut of Patna having represented to the Governor General and Council, that there were numerous complaints brought before him for debts due on mortgage

Custom of India.

Necessity of a general rule for the limitation of interest. Rates established in 1772.

And provisions then made for forfeiture of illegal interest. As well as of the principal in cases of excessive deduction. Also for attestation of bonds.

Qualification and further provisions, in regulations of 28th March, 1780.

Similar provisions, with modification respecting bonds, in regulations of 5th July, 1781. Supplementary article, respecting mortgages, 13th June.

<sup>1</sup> The provisions of the Hindoo law on loans, interest, and pledges, are fully stated in the three first chapters of Mr. H. Colebrooke's translation of the digest on contracts and successions, compiled under the superintendence of the late Sir W. Jones, and commented upon by Jagannath Tercapanchanana, an eminent pundit, who was living when the first edition of this Analysis was printed, at the advanced age of one hundred and eight years: and resident at Tirveny, about thirty miles from Calcutta; where, surrounded by four generations of his descendants, in number nearly an hundred, he gave daily lectures to his pupils upon the principles of law and philosophy.

bonds ; by inquiry into which, the receipts from the subject mortgaged often appeared to have more than doubled the original loan ; he considered these as cases of such hardship, as to request the honorable board's instructions how to proceed relative to them, as such practices, however conformable to the custom of the Behar province, appeared to him in the light of a palpable evasion of the 21st article of the regulations ; wherefore he proposed that only the same interest should be allowed on mortgage bonds, that is, by the abovementioned article of the code, allowed on other bonds ; and that the mortgaged property should be redeemed whenever the original, with the simple interest arising thereon, should be or have been discharged by the mortgagee ; which propositions having, on the 13th June, 1783, met with the honorable board's approbation, the judge was directed to act accordingly ; and this is therefore to be considered as a general rule throughout the provinces." It is unnecessary to specify Section 21, of the revised regulations for the civil courts, passed on the 27th June, 1787 ; as it was annulled, and the 21st article of the former regulations of 5th July, 1781, restored, on the 19th August, 1789. It is also immaterial to notice the alterations made in the former rules, respecting interest and mortgages, by the resolutions of Government under dates the 28th, 29th, 30th, and 31st October, 1790 ; as they have been since more fully provided for. But it is requisite to add, as preliminary to the existing rules, that by a regulation passed on the 23d November, 1792, it was enacted that, from the first day of January, 1793, the limitation of interest, upon all debts, or other causes of action, arising subsequently to that date, should be fixed at the rate of twelve per cent. per annum, whether the principal amount be more or less than one hundred sicca rupees.

Section 21, of regulations passed 27th June, 1787, annulled 19th August, 1789. Alterations made in October, 1790, since more fully provided for. Uniform rate of interest fixed at 12 per cent. from 1st January, 1793.

Foregoing recital preliminary to R. 15, 1793. Fixing rates of interest on loans, in Bengal, Behar, and Orissa. Section 2, of that regulation. Rates of interest before 25th March, 1780.

Section 3. Rates of interest from 25th March, 1780 to 1st January, 1793.

Section 4. Rate of interest from 1st January, 1793.

Section 5. Provision, if less than authorized rates be stipulated.

The foregoing observations and recital have been stated for the purpose of explaining the following provisions contained in Regulation 15, 1793, for fixing the rates of interest (to be adjudged) on past and future loans, in Bengal, Behar, and Orissa. § 2. "If the cause of action shall have arisen before the twenty-eighth day of March, one thousand seven hundred and eighty, the courts of civil judicature are not to decree higher or lower rates of interest than the following : on sums not exceeding one hundred sicca rupees, three rupees and two annas per cent. per mensem, or thirty-seven rupees and eight annas per cent. per annum ; on sums exceeding one hundred sicca rupees, two per cent. per mensem, or twenty-four per cent. per annum." § 3. "If the cause of action shall have arisen at any period between the twenty-eighth day of March, one thousand seven hundred and eighty, and the first day of January, one thousand seven hundred and ninety-three, no higher or lower rates of interest than the following are to be decreed : on sums not exceeding one hundred sicca rupees, two per cent. per mensem, or twenty-four per cent. per annum ; on sums exceeding one hundred sicca rupees, one per cent. per mensem, or twelve per cent. per annum." § 4. "If the cause of action shall have arisen on or after the first day of January, one thousand seven hundred and ninety-three, the courts are not to decree any interest, on any sum whatever, above the rate of twelve per cent. per annum." § 5. "If in any of the cases specified in Sections 2, 3, and 4, a lower rate of interest, than any of the rates therein authorized to be awarded, shall have been stipulated between the parties, no higher rate of interest than the rate so stipulated is to be decreed."

Twelve per cent. per annum is also the limitation of interest, to British subjects in the East Indies, fixed by the Statute 13, G. III. Cap. 63, and § 90, from the 1st August, 1774 ; under penalty of forfeiting treble value of any loan at higher interest, direct or indirect, with costs, besides making void all bonds, contracts, and assurances, executed after the above date, for the principal.

§ 6. "If the interest on any debt, calculating according to the rates allowed by this regulation, shall have accumulated so as to exceed the principal, the courts are not, in any cases whatever (excepting the cases specified in Section 12,) to decree a greater sum for interest than the amount of such principal."

Section 6.  
What judgment to be given, when accumulated interest may exceed the principal.  
Section 7.  
In what cases only, compound interest to be allowed.

§ 7. "The courts are not to decree any compound interest, arising from intermediate adjustments of accounts. This rule however is not to extend to cases in which accounts between the parties shall have been adjusted, and the former bonds or agreements cancelled, and new bonds or agreements taken for the aggregate amount of the principal and the legal interest remaining due upon the adjustment, consolidated into principal." § 8. "The courts are not to decree any interest whatever, in any case where the bond or instrument given for the security and evidence of the debt shall have been granted on or subsequent to the twenty-eighth day of March, one thousand seven hundred and eighty, and shall specify a higher rate of interest than is authorized by this regulation to have been given and received subsequent to that date."

Section 8.  
Interest forfeited, if the specified rate be illegal.

§ 9. "Nor to decree any interest whatsoever in favor of the plaintiff, in any case where the cause of action shall have arisen on or subsequent to the twenty-eighth day of March, one thousand seven hundred and eighty, where a greater interest, than is authorized by this regulation, shall have been received, or stipulated to be received, if it be proved that any attempt has been made to elude the rules prescribed in it, by any deduction from the loan, or by any device or means whatever; nor to give any other judgment, but for the dismissal of the suit, with costs to be paid by the plaintiff."

Section 9.  
Forfeiture of principal and interest in cases of excessive deduction, or other device.

§ 10. "In cases of mortgages of real property, executed prior to the twenty-eighth day of March, one thousand seven hundred and eighty, in which the mortgagee may have had the usufruct of the mortgaged property, whether he shall have held it in his own possession or not, the usufruct is to be allowed to the mortgagee in lieu of interest, agreeably to the former custom of the country, (provided it shall have been so stipulated between the parties) until the above-mentioned date; subsequent to which the same interest to be allowed on such mortgage bonds, and also on all bonds for the mortgage of real property which have been entered into on or since that date, or that may be hereafter executed, as is allowed on other bonds, which have been or may be granted on or posterior to such date, and no more; and all such mortgages are to be considered as virtually and in effect cancelled and redeemed, whenever the principal sum, with the simple interest due upon it, shall have been realized from the usufruct of the mortgaged property, subsequent to the twenty-eighth day of March, one thousand seven hundred and eighty, or otherwise liquidated by the mortgager."

Section 10.  
Usufruct in lieu of interest, allowed in mortgages prior to 28th March, 1794. But mortgage bonds, subsequent to that date, subject to the same limitations of interest as other bonds. And mortgages to be cancelled and redeemed on receipt of the principal and simple interest from the usufruct.

§ 11. "For the adjustment of accounts in the cases of mortgages specified in Section 10, where the mortgagee shall have had the usufruct of the mortgaged property, the mortgagee is to be required to deliver in the accounts of his gross receipts from the property mortgaged, and also of his expenditures for the management or preservation of it. The mortgagee is to swear, or (if he be of the description of persons whom the courts are empowered to exempt from taking oaths) to subscribe a solemn declaration, that the accounts which he may deliver in are true and authentic. The mortgager is to be permitted to examine the accounts, and after hearing any objections he may have to offer, or any evidence that either party may have to adduce respecting them, the court is to adjust the account."

Section 11.  
Accounts to be delivered by the mortgagee, and adjustment to be made by the court, in the cases mentioned.

§ 12. "The rules contained in the preceding sections are not to be con-

Section 12.  
Exception to the preceding rules.

<sup>1</sup> This provision has no reference to the interest upon sums adjudged, which is authorized and directed by Section 3, Regulation 13, 1796, when a judgment appealed from may be confirmed. *Vide* section referred to, under the head of *Provincial Courts*, p. 121.

loans, and policies of insurance, from preceding rules.

R. 3, 1793, § 15. Evidence to be required, in giving judgment upon bonds, executed after 28th March, 1780.

But restriction not to include bills of exchange, receipts, or notes of hand.

R. R. 7, 1795, § 9.

Above rule, concerning bonds, extended to Benares, with a further exception of the money transactions of bankers.

R. 17, 1806, § 2. Provisions of R. 15, 1793, extended to Benares, with modifications.

Section 3. What interest to be adjudged if the cause of action have arisen before the period stated in the preceding section.

Section 4. Rate of interest to be adjudged after the period specified in Section 2.

Section 5. Penalties in Sections 8 and 9, R. 15, 1793, not applicable to loans contracted, or engagements given, before the period stated in Section 2.

Section 6. From what period the rule for redemption of mortgaged property, in Section 10, R. 15, 1793, to have effect in Benares.

Provision to R. 1, 1798. Prevalence of

dered to extend to respondentia loans, or policies of insurance; the interest on which is to be regulated by the terms of the deeds, and the laws and usages which prevail respecting such transactions."

By Section 15, Regulation 3, 1793, the provision before in force, respecting the evidence required for the proof of bond debts, was continued in the following terms. "The zillah and city courts are prohibited decreeing the payment or satisfaction of any sum due on a tamassook or bond, which may have been entered into after the 28th March, 1780, unless the bond shall be proved to have been executed in the presence of two credible witnesses, or the payment of the sum demanded on the bond, or some other valuable consideration for it having been received, shall be proved to the satisfaction of the court. But the restriction contained in this section is not to extend to any bills of exchange, receipts, or notes of hand; in the determination on which the custom of the country is to be abided by." This rule was extended to the province of Benares, with respect to bonds executed after the 1st July, 1795, by Section 9, Regulation 7, 1795; with an additional restriction that it should not be applied to "the dealings and money transactions amongst mahajuns and shroffs; in which the established customs observed and enforced amongst them are to be adhered to by the courts in their inquiries and decisions." The provisions contained in the several sections of Regulation 15, 1793, above cited, were also declared, in Section 2, R. 17, 1806, "to extend to the province of Benares, from the commencement of the ensuing year, 1807, A. C. corresponding with the 19th Poos of the Bengal year 1213, and 7th Poos of the Fussily year, 1214; subject to the following modifications." § 3, "Instead of the limitations of interest specified in Sections 2 and 3, Regulation 15, 1793, if the cause of action shall have arisen before the period stated in the preceding section, the courts of civil judicature are to decree whatever rate of interest may have been voluntarily stipulated; or, if interest be payable in any case wherein a specific rate may not have been stipulated, according to the law and usage of the province; in conformity with the spirit of Section 9, Regulation 7, 1795; which directs, with respect to bills of exchange, receipts, or notes of hand, that the custom of the country is to be abided by; and with respect to dealings and money transactions amongst mahajins and shroffs, that the established customs observed, and enforced, amongst them, are to be adhered to by the courts in their inquiries and decisions." § 4. "If the cause of action shall arise after the period specified in Section 2, of this regulation, the courts are not to decree any interest above the rate of one per cent. per mensem; or twelve per cent. per annum." § 5. "The forfeiture of interest, for stipulation of a higher rate than what is authorized, enacted by Section 8, Regulation 15, 1793, and the forfeiture of principal and interest, in cases of attempts to elude the prescribed rules, by deductions from the principal, or other devices, provided against by Section 9, Regulation 15, 1793, shall not be considered applicable to any loans actually and bonâ fide contracted, or to any bonds or other instruments voluntarily given for the evidence and security of such loans, previously to the period stated in Section 2, of this regulation." § 6. "The rule contained in Section 10, Regulation 15, 1793, for the redemption of mortgaged property whenever the principal sum lent, and the simple interest due thereupon, shall have been realized from the usufruct, is to be considered in force, throughout the province of Benares, from the commencement of the Fussily year 1214; but shall not be applied retrospectively, in opposition to any subsisting engagement, voluntarily contracted before the period fixed for the operation of this regulation."

Under the prohibition of the Mahomedan law, against the taking of interest upon money lent; as well as for the greater security of money lenders, whe-

ther Hindoo or Mahomedan, by having a pledge equivalent, or superior in value, to the sum advanced by them ; it has long been a prevalent practice to borrow money on the mortgage, and conditional sale, of landed property, under a stipulation, that if the sum borrowed be not repaid (with or without interest) by a fixed period, the sale shall become absolute. This species of transfer is usually denominated *Bye-bil-wuffa* (conditional sale, or sale to be completed) in the province of Behar, where it is most frequent ; and is also common in Bengal, under an instrument termed *Kut Cubáleh*. The promulgation of Regulation 15, 1793, increased the prevalence of this transaction, with a view to avoid the limitations of interest ; and instances occurred, in which persons lending money on *Bye-bil-wuffa*, in order to render the sale absolute, denied the tender, or evaded receiving payment, of the money due to them, within the period limited for the discharge of it. In such cases the proof of the tender falls upon the borrower ; and if he fail, from want of legal evidence, he is liable to lose his estate. It was therefore necessary, for the security of the borrower in such transactions, that he should have the means of establishing before the courts of judicature his having tendered, or being ready to pay, within the stipulated period, the amount due from him to the lender ; and the following rules were enacted for this purpose, in Regulation 1, 1798 ; to have effect, from the receipt of it, by the several courts of judicature, in the provinces of Bengal, Behar, Orissa, and Benares.

conditional sales of land, upon loans, under deeds of *Bye-bil-wuffa*, or *Kut Cubáleh*, and necessity of provisions respecting them.

Following rules enacted in Regulation above mentioned, for provinces of Bengal, Behar, Orissa, and Benares.

Section 2. Borrower in such cases how to proceed for the redemption of his lands within the stipulated period.

§ 2. "In all instances of the loan of money on *Bye-bil-wuffa*, or on the conditional sale of landed property, however denominated, the borrower, who may be desirous to redeem his land by the payment of the money lent upon it, with any interest due thereon, within the stipulated period, is at liberty, on or before the date stipulated, either to tender and pay to the lender the amount due to him ; taking such precautions as he may think necessary to establish such tender and payment, if evaded or denied ; or, without any tender to the lender, to deposit the amount due to him, on or before the stipulated date, in the dewanny adawlut of the city or zillah in which the land may be situated ; and the judge receiving the same shall furnish the party with a written receipt for the amount, specifying on what date, and for what purpose, such deposit may have been made. He shall also, at the same time, cause a written notice of such deposit to be delivered to the lender ; and on the application of the latter, and his surrender of the conditional bill of sale, or showing satisfactory cause why it cannot be surrendered, shall pay him the amount deposited ; and take his acknowledgement, to remain among the records of the court. That there may be no doubt to what amount the deposit in question is to be made, it is required to be as follows :—When the lender has not obtained possession of the lands, the deposit is to be the principal sum lent, with the stipulated interest thereon, not exceeding the legal rate of twelve per cent. per annum ; or if interest be payable, and no rate has been stipulated, with interest at the established rate of twelve per cent ; but if the lender has held possession of the land, the principal sum borrowed only need be deposited, leaving the interest to be settled on an adjustment of the lender's receipts and disbursements, during the period he has been in possession. In either case, a deposit, made as above required, shall be considered to preserve to the borrower his full right of redemption ; and if the land be in the possession of the lender, shall entitle him to demand the immediate recovery thereof, subject to the adjustment of accounts specified in the following section. Provided however, that if the borrower, in any case, shall deposit a less sum than above required, alleging that the sum so deposited is the total amount due to the lender, for principal and interest, after deducting the proceeds of the lands in his possession, or otherwise, such deposit shall be received ; and notice given to the lender as above directed ; and if the amount so deposited be admitted



## Section 3.

The lender to account for the proceeds of the estate whilst in his possession, on the principles prescribed in R. 15, 1793, as far as applicable.

But redemption from the usufruct, provided for by Section 10, of that regulation, inapplicable to the conditional sales here referred to.

## Section 4.

Teeps, or notes of bankers, not to be considered a legal tender; unless accepted as such by the lender.

## Section 5.

These provisions not meant to alter any terms of contract settled between the parties; illegal interest excepted.

R. 34, 1803. Rules stated, relative to mortgages, conditional sales, limitations of interest, and usury, re-enacted for ceded provinces, with qualifications.

## Section 2.

Rates of interest, before 10th November, 1801.

## Section 3.

Limitation of interest to 12 per cent. after that date.

Sections 7, 8. Rules of forfeiture to have operation from 1st January, 1801.

## Section 9.

Usufruct allowed to mortgagees till the 10th November, 1801.

All pledges since that date, without a condition of sale, redeemable from the usufruct, as in other provinces.

by the lender, or be established on investigation, to be the total amount due to him, the right of redemption shall be considered to have been fully preserved to the borrower; who will not however, in such cases, be entitled to the recovery of his lands, until it be admitted, or established, that he has paid the full amount due from him." § 3. "In all instances wherein the lender on a Bye-bil-wuffa, or similar conditional sale, may have been put in possession of the land, and an adjustment of accounts may consequently become necessary between him and the borrower, the lender is to account to the borrower for the proceeds of the estate whilst in his possession, on the principles prescribed, with regard to mortgages and interest, in Regulation 15, 1793, as far as the same may be applicable to the nature of the case. But such part of Section 10, of the above regulation, as directs that the mortgages therein referred to are to be considered as cancelled and redeemed, whenever the principal sum, with the simple interest due upon it, shall have been realized from the usufruct of the mortgaged property, or otherwise liquidated by the mortgagee, being inapplicable to the conditional sales referred to in this regulation, it is declared not to apply thereto." § 4. "A teep, for the repayment of money lent on the conditional sales referred to in this regulation, shall not be considered a legal tender, unless accepted as such by the lender; the proof of which acceptance shall be the lender's giving up the bill of sale, or giving a written acknowledgement that he has received back the money lent by him." § 5. "Nothing in this regulation being intended to alter the terms of contract settled between the parties, in the transactions to which it refers, (illegal interest excepted) the several provisions in it are to be construed accordingly; and any question of right between the parties is to be regularly brought before, and determined by, the courts of civil justice."

The whole of the foregoing provisions, relative to mortgages and conditional sales of land, as well as the limitations of interest and penalties for usury, contained in Regulation 15, 1793, were re-enacted for the ceded provinces, by Regulation 34, 1803; with the undermentioned qualifications. "If the cause of action shall have arisen before the 10th day of November, 1801, the courts of judicature are not to decree higher rates of interest than the following, viz. on sums not exceeding one hundred sicca rupees, two rupees eight annas per cent. per mensem, or thirty per cent. per annum; on sums exceeding one hundred sicca rupees, two per cent. per mensem, or twenty-four per cent. per annum. If the cause of action shall have arisen on or subsequent to the 10th November, 1801, the courts are not to decree interest on any sum whatever, above the rate of twelve per cent. per annum." The rule against any judgment for interest, when the bond or other instrument shall specify more than the authorized rate, is restricted to instruments granted on, or subsequent to, the 1st day of January, 1804; and the further rule for dismissing the claim to principal as well as interest, with costs, on proof of any attempt made to elude the prescribed rates of interest, by a deduction from the loan or other device, is also confined to cases in which the cause of action shall have arisen on, or subsequent to, the above date. In consideration of the former custom of the country, which allowed the usufruct of lands to be received in lieu of interest, provision is likewise made for the continuance of such custom to the 10th November, 1801, (the time of cession to the Company) after which, as in the other provinces, all pledges of land, or other real property, for the payment of money, which may not have been mortgaged with an eventual condition of sale, under deeds of Bye-bil-wuffa, or any similar denomination, are to be considered as virtually cancelled and redeemed, whenever the principal sum, with the simple interest due upon it, shall have been realized from the usufruct."

The following additional provisions were enacted in Sections 7 and 8, of Regulation 17, 1806, to be in force from the time of their promulgation of all the provinces subject to the presidency of Fort William; "for the purpose of preventing improvident and injurious transfers of landed property, at an inadequate price, by the forfeiture of mortgages, accompanied with a condition of sale to the mortgagee, if the amount be not repaid within a stated period." § 7. "In addition to the provisions made in the provinces of Bengal, Behar, Orissa, and Benares, by Regulation 1, 1798, and in the ceded and conquered provinces by Regulation 34, 1803, for the redemption of mortgages and conditional sales of land, under deeds of *bye-bil-wuffa*, *kut-cubaleh*, or any similar designation, it is hereby provided, that when the mortgagee may have obtained possession of the land, on execution of the mortgage deed, or at any time before a final foreclosure of the mortgage, the payment, or established tender, of the sum lent under any such deed of mortgage and conditional sale, or of the balance due, if any part of the principal amount shall have been discharged, or when the mortgagee may not have been put in possession of the mortgaged property, the payment, or established tender, of the principal sum lent, with any interest due thereupon, shall entitle the mortgager and owner of such property, or his legal representative, to the redemption of his property, before the mortgage is finally foreclosed, in the manner provided for in the following section; that is to say, at any time within one year (Bengal, Fussily, or Willaity, according to the era current, where the mortgage may take place,) from and after the application of the mortgagee to the zillah or city court of dewanny adawlut, for closing the mortgage, and rendering the sale conclusive, in conformity with Section 8, of this regulation; provided that such payment, or tender, be clearly proved to have been made to the lender and mortgagee, or his legal representative; or that the amount due be deposited, within the time above specified, in the dewanny adawlut of the zillah or city in which the mortgaged property may be situated; as allowed, for the security of the borrower and mortgager, in such cases, by Section 2, Regulation 1, 1798, and Section 12, Regulation 34, 1803; the whole of the provisions contained in which sections, as applied therein to the stipulated period of redemption, are declared to be equally applicable to the extended period of one year, granted for an equitable right of redemption by this regulation." § 8. "Whenever the receiver or holder of a deed of mortgage and conditional sale, such as is described in the preamble and preceding sections of this regulation, may be desirous of foreclosing the mortgage and rendering the sale conclusive, on the expiration of the stipulated period, or at any time subsequent before the sum lent is repaid, he shall (after demanding payment from the borrower, or his representative,) apply, for that purpose, by a written petition to be presented by himself, or by one of the authorized vakeels of the court, to the judge of the zillah or city in which the mortgaged land, or other property, may be situated. The judge, on receiving such written application, shall cause the mortgager, or his legal

Additional provisions in Sections 7 and 8, of R. 17, 1806, for all the provinces.

Section 7. Provision for the redemption of mortgages and conditional sales of land, under deeds of *bye-bil-wuffa*, *kut-cubaleh*, or any similar designation, at any time within one year after the mortgagee's application to the zillah or city court, for foreclosing the mortgage, and rendering the sale conclusive.

Section 8. Mortgagee, or holder of a deed of mortgage and conditional sale, such as described, how to proceed, when desirous of foreclosing the mortgage, and rendering the sale conclusive. Judge of the zillah, or city

<sup>1</sup> The provision made by this regulation for allowing (in the terms of its preamble) "a redemption of the estate within a reasonable and limited period, on payment of the principal sum lent, with interest thereupon, if the mortgagee shall not have been put in possession," has superseded the suggestion offered in a note to the first edition of this Analysis (p. 193.) for extending to Indian landholders, who have mortgaged and conditionally sold their lands, under deeds of *Bye-bil-wuffa*, *Kut-Cubaleh*, or other designation, "the equity of redemption allowed by the English courts of equity, whereby the mortgager is permitted, though a mortgage be forfeited, and the estate absolutely vested in the mortgagee by the common law, if the estate be of greater value than the sum lent thereon, at any reasonable time, to recall or redeem his estate, paying to the mortgagee his principal, interest, and expenses."—*Blackstone's Com. B. ii. ch. 10.*

court, how to proceed on receiving applications for the purpose stated.

R. 34, 1803, for determining the rate of interest on money, extended to the provinces ceded by Doulut Rao Sendheea, and by the Peshwa, with alteration of dates, by R. 8, 1805, § 23. Rule of evidence respecting bonds, in Section 15, R. 3, 1793, re-enacted for the ceded and conquered provinces by R. b. 1805, § 6, c. 3.

Rule substituted for R. 15, 1793, by Section 9, R. 11, 1805, in Cuttack, and three pergunnahs acquired in October, 1803. Interest to be adjudged if the cause of action have arisen before the 14th October, 1803.

Or, if the cause of action have arisen on, or subsequent to, the 14th October, 1803. In what case no judgment for interest to be given.

representative, to be furnished, as soon as possible, with a copy of it, and shall at the same time, notify to him, by a perwanah under his seal and official signature, that if he shall not redeem the property mortgaged, in the manner provided for by the foregoing section, within one year from the date of the notification, the mortgage will be finally foreclosed, and the conditional sale will become conclusive.”

Regulation 34, 1803, “for determining the rate of interest on money, in the provinces ceded by the Nuwaub Vizier” is extended by Section 23, Regulation 8, 1805, to the provinces ceded by Doulut Rao Sendheea, and by the Peshwa, with the following modification. “The 30th of December, 1803, shall be the date to be adopted in the zillahs of Allyghur, Agra, and the northern and southern division of the zillah of Saharunpore; and the 16th of December, 1803, shall be the date to be adopted in the zillah of Bundelcund; in lieu of the date specified in Sections 2, 3, and 9, Regulation 34, 1803. The 1st of January, 1806, shall be adopted in the whole of the above zillahs, in lieu of the date specified in Sections 7 and 8, of the said regulation.” The rule of evidence respecting bonds, contained in Section 15, Regulation 3, 1793, (and extended to the province of Benares, as already noticed, by Section 9, Regulation 7, 1795,) was also re-enacted for the ceded and conquered provinces, by the third clause of Section 6, Regulation 8, 1805, in the following terms:—“The zillah courts are prohibited from decreeing the payment or satisfaction of any sum due on a tummasook, or bond, which may be entered into after the promulgation of this regulation, unless the bond shall be proved to have been executed in the presence of two credible witnesses; or the payment of the sum demanded on the bond, or some other valuable consideration for it having been received, shall be proved to the satisfaction of the court. But the restriction contained in this clause shall not extend to any bills of exchange, receipts, or notes of hand; in the determination on which the custom of the country shall be abided by.”

The following rule has been substituted for Regulation 15, 1793, by Section 9, Regulation 14, 1805, in Cuttack, and the three pergunnahs acquired with that district in October, 1803. “*First.* The following rules shall be observed in the zillah of Cuttack, including the pergunnahs of Putrespore, Kummardichour, and Bograe, respecting the payment of interest on money. *Second.* If the cause of action shall have arisen before the 14th of October, 1803, the courts of civil judicature are not to decree a higher or lower rate of interest than the following; unless a lower rate of interest shall have been stipulated to be paid by the parties in the suit:—

“On sums not exceeding one hundred sicca rupees, two rupees and eight annas per mensem, or thirty per cent. per annum.

“On sums exceeding one hundred sicca rupees, two per cent. per mensem.

“*Third.* If the cause of action shall have arisen on, or subsequently to, the 14th of October, 1803, the courts are not to decree interest on any sum whatever above the rate of twelve per cent. per annum. *Fourth.* The courts are not to decree any interest whatever, in any case, where the bond, or instrument given for the security and evidence of the debt, shall have been granted on, or subsequently to, the 14th day of October, 1803, and shall

<sup>1</sup> On the 27th of December, 1807, the court of sudder dewanny adawlut, in answer to a reference from the judge of zillah Midnapore, through the Calcutta provincial court, declared the construction of the above section to be, that it is applicable to all conditional sales, which may not have become conclusive, by the expiration of the stipulated period, before the time fixed in the preamble for this regulation to be in force; but not to any conditional sale, which had become conclusive before this regulation was in force.

specify a higher rate of interest than is authorized in clause third of this section. *Fifth.* Nor to decree any interest whatever in favor of the plaintiff in any case, where the cause of action shall have arisen on, or subsequently to, the 14th of October, 1803, where a greater interest, than that which is authorized by this regulation, shall have been received or stipulated to be received, if it be proved that any attempt has been made to elude the rules prescribed, in it, by any deduction from the loan, or by any device or means whatever; nor to give any other judgment but for the dismissal of the suit, with costs to be paid by the plaintiff. *Sixth.* In cases of mortgages of real property, executed prior to the 14th of October, 1803, in which the mortgagee may have had the usufruct of the mortgaged property (whether he shall have held it in his own possession or not,) the usufruct is to be allowed to the mortgagee, in lieu of interest, agreeably to the former custom of the country, (provided it shall have been so stipulated between the parties) until the abovementioned date; subsequently to which, the same interest is to be allowed on such mortgage bonds, and also on all bonds for the mortgage of real property, which have been entered into, on or since that date, or that may be hereafter executed, as is allowed on all bonds, which have been, or may be granted on, or posterior to, such date, and no more; and all such mortgages are to be considered as virtually and in effect cancelled and redeemed, whenever the principal sum, with the simple interest due upon it, shall have been realized from the usufruct of the mortgaged property, subsequent to the 14th day of October, 1803, or otherwise liquidated by the mortgagor."

The last clause of the above rule corresponds exactly, (except in the date fixed for its operation) with Section 10, Regulation 15, 1793; and in the third section of Regulation 1, 1798, "to prevent fraud and injustice in conditional sales of land, under deeds of bye-bil-wuffa, or other deeds of the same nature;" it is declared, that such part of Section 10, Regulation 15, 1793, "as directs, that the mortgages, therein referred to, are to be considered as cancelled and redeemed, whenever the principal sum, with the simple interest due upon it, shall have been realized from the usufruct of the mortgaged property, or otherwise liquidated by the mortgagee, being inapplicable to the conditional sales referred to in this regulation, it is hereby declared not to apply thereto." Of course, this explanation applies equally to the sixth clause of Section 9, Regulation 14, 1805; and under Section 11, of that regulation, whereby all regulations in force, upon matters of civil cognizance, in the provinces of Bengal, Behar, and Orissa, which are not inconsistent with the special provisions for Cuttack and its dependencies, are extended thereto, the provisions relative to conditional sales of land, in Regulation 1, 1798, with those in Sections 7 and 8, of Regulation 17, 1806, must be considered in force throughout the zillah of Cuttack; as well as in pergunnahs Puttespore, Kummardichour, and Bograe, annexed to zillah Midnapore.

In concluding the present title, relative to loans, and mortgages, it may be proper to state the prohibitions contained in Sections 2 and 3, of Regulation 38, 1793, re-enacted for Benares in Sections 2 and 3, of Regulation 48, 1795, and for the ceded provinces in Sections 2 and 3, of Regulation 19, 1803. The preamble to the regulation first mentioned is as follows:—

"At an early period after the establishment of the British Government in this country, the servants of the Company employed in the administration of justice, and the collection of revenue, were prohibited from lending money to the landholders and farmers, and others concerned in the collection or payment of the revenue, in order to guard against the abuses that the powers with which they were invested would have enabled them to practice, had they been permitted to engage in such transactions with individuals subject to their

In what case no judgment to be given but for the dismissal of the suit with costs.

Rule to be observed with respect to mortgages of real property executed prior to or since the 14th October 1803.

Remark upon the last clause of the above rule; as not applicable to conditional sales of land, under deeds of bye-bil wuffa, or other deeds of the above nature.

Provisions in R. 1, 1798, and Sections 7, 8, of R. 17, 1806, relative to such mortgages and conditional sales, in force for Cuttack, and three pergunnahs annexed to zillah Midnapore, as in Bengal and other provinces. Prohibitions contained in R. 38, 1793, § 2, 3, re-enacted for Benares, in R. 48, 1795, § 2, 3, and for ceded provinces in R. 19, 1803, § 2, 3. Preamble to R. 38, 1793.

Section 2.  
Covenanted  
servants of the  
Company em-  
ployed in the  
administration  
of justice, or  
the collection  
of the revenue,  
prohibited  
lending money  
to proprietors  
or farmers of  
land, depend-  
ant talook-  
dars, under  
farmers, or ry-  
ots, or their  
sureties.  
Section 3.  
Europeans  
now posses-  
sing, or who  
may hereafter  
purchase, rent,  
or occupy  
land, without  
the sanction of  
the Governor  
General in  
Council, liable  
to be dispos-  
sessed at his dis-  
cretion

official control and authority. This rule was incorporated with the judicial regulations, passed on the 5th July, 1781, and has since continued in force. From a regard to the prejudices of the natives, and with a view to promote their ease and happiness, and to obviate the evils that would necessarily have resulted from allowing any persons not amenable to the provincial courts of judicature in common with the natives, to purchase or rent estates, without restriction or limitation, or to hold any land whatever, excepting for the erection of dwelling houses, or buildings for manufactures, or other commercial purposes, it was likewise early made a rule, that no European should purchase or hold land out of the limits of Calcutta without the sanction of Government. This rule was included in the revenue regulations passed on the 8th June, 1787, and has since remained in force. The rules abovementioned are hereby re-enacted with modifications." § 2. "The judges and magistrates of the zillah and city courts, the judges of the provincial courts of appeal, and the courts of circuit, and the registers to their respective courts, and their assistants, or other officers being covenanted servants of the Company, and the collectors of the revenue and their assistants, are prohibited lending money, directly or indirectly, to any proprietor or farmer of land, or dependant talookdar, or under farmer or ryot, or their sureties; and all such loans as have been made in opposition to the repeated prohibitions of Government, or which may be hereafter made, are declared not recoverable in any court of judicature." § 3. "No European, of whatever nation or description, shall purchase, rent, or occupy, directly or indirectly, any land out of the limits of the town of Calcutta, without the sanction of the Governor General in Council; and all persons now so holding land beyond the limits of Calcutta, without having obtained such permission, in opposition to the repeated prohibitions of Government, or who may hereafter so purchase, rent, or occupy land, shall be liable to be dispossessed of the land at the discretion of the Governor General in Council, nor shall they be entitled to any indemnification for buildings which they may have erected, or other account."

### *Succession, and Administration, to Estates.*

R. 11, 1793.  
R. 44, 1795.  
R. 10, 1800.  
Hindoo and  
Mahomedan  
laws of inher-  
itance.  
Custom in de-  
viation there-  
from; whereby  
particular es-  
tates were  
kept undi-  
vided.

The Hindoo and Mahomedan laws of inheritance sanction and prescribe a division of patrimonial property amongst sons and other legal heirs, when they may require a partition, in preference to keeping the estate, for their common benefit, under the management of the elder brother, or other principal representative of the family.<sup>1</sup> But a custom, the reverse of that of gavel-kind in England, was established in the provinces of Bengal, Behar, and Orissa, before their subjection to British authority; whereby some of the most extensive zemindaries, or land tenures in chief, on the death of the

<sup>1</sup> The further provisions in Sections 4, 5, and 6, of Regulation 38, 1793, relative to Europeans not prohibited from lending money to landholders and others, and respecting the measurement of lands which Europeans may be permitted to purchase, or occupy, are stated at length in the second volume of this Analysis, p. 127.

<sup>2</sup> For the Hindoo rules of succession, consult the institutes of Menu, translated by Sir W. Jones, and the 3d and 4th volumes of the digest of Hindoo law mentioned in a preceding note to the present section. The Mahomedan law of inheritance is stated and explained in the translation of *Al Sirdjizyah*, and its commentary, by Sir W. Jones. See also Reports of civil causes adjudged by the court of sudder dewanny adawlut, and noticed in the index to those reports, under heads of *Inheritance under Mahomedan law*: and *Inheritance under Hindoo law*.

possessor, devolved entire to his eldest son, or other nearest of kin, to the exclusion of the younger sons, and other legal heirs, who were entitled to a suitable maintenance only. This custom may have originated in the indivisible nature of the Hindoo principalities, antecedent to the Mosulman conquest; or in considerations of policy and convenience, consequent to that conquest; such as introduced the impartible feudal tenures in Europe, and their descent to the eldest son only.\* The reasons for it, whatever they might have been in former times, had however ceased to operate under the British Government; especially after the declaration of the proprietary rights of zemindars, and other landholders, made by the proclamation contained in Regulation 1, 1793; and the limitation of the public assessment upon lands, declared by the same proclamation to be fixed in perpetuity. A continuance of the usage in question was also deemed unfavorable to the general improvement of landed property "from the proprietors of these large estates not having the means, or being unable to bestow the attention, requisite for bringing into cultivation the extensive tracts of waste land comprised in them." It was therefore enacted by Section 2, of Regulation 11, 1793, that, after the 1st July, 1794, "if any zemindar, independent talookdar, or other actual proprietor of land, shall die without a will, or without having declared by a writing, or verbally, to whom and in what manner his or her landed property is to devolve, after his or her demise, and shall leave two or more heirs, who by the Mahomedan or Hindoo law (according as the parties may be of the former or latter persuasion) may be respectively entitled to succeed to a portion of the landed property of the deceased, such persons shall succeed to the shares to which they may be so entitled."

Origin of this custom.

Reasons for discontinuance of it.

Preamble to R. 11, 1793.

Provision made by Section 2, of that regulation, for succession of all the legal heirs from 1st July, 1794.

Section 3, 4. Further provision for joint tenancy, or division of estates.

Restriction in Section 5.

Section 6. Not meant to prohibit any legal bequests, in favor of one or more persons.

Provision was at the same time made, by Sections 3 and 4, of the above-mentioned regulation, for allowing two or more persons, succeeding to an estate, either to hold it joint and undivided, under a common manager; or to obtain a division and separate possession of their respective shares, under the rules prescribed for the division of estates, paying revenue to Government, in Regulation 25, 1793.<sup>a</sup> It was further provided, in Sections 5 and 6, that nothing contained in Regulation 11, 1793, should be construed to entitle any person to the share of an estate held entire by any individual, or that might devolve entire to any individual prior to the 1st July, 1794, under the custom for the future abolition of which that regulation was enacted. "Nor to prohibit any actual proprietor of land bequeathing or transferring by will, or by a declaration in writing, or verbally, either prior or subsequent to the 1st July, 1774, his or her landed estate to his or her eldest son, or next heir, or other son or heir, in exclusion of all other sons or heirs, or to any person or persons, or to two or more of his or her heirs, in exclusion of all other persons or heirs, in the proportions, and to be held in the manner, which such proprietor may think proper; provided that the bequest or transfer be not repugnant to any regulations that have been or may be passed by the Governor General in Council, nor contrary to the Hindoo or Mahomedan law; and that the bequest, or transfer, whether made by a will, or other writing, or verbally, be authenticated by, or made before, such witnesses, and in such manner, as those laws and regulations respectively do or may require"

\* Vide Blackstone, vol. ii. page 215. In the preamble to Regulation 11, 1793, the custom referred to is assumed to have originated under the native administrations of Bengal and Behar, "In considerations of financial convenience;" and is stated to be "repugnant to the Hindoo and Mahomedan laws, which annex to primogeniture no exclusive right of possession to landed property."

<sup>a</sup> Vide second volume of this Analysis, under head of *Division and Reunion of Estates*, p. 449.

Above provisions re-enacted for Benares, in R. 44, 1795. But jungul mehals of Midnapore, and other districts, excepted from the stated rules by R. 10, 1800.

And local custom to be continued in these mehals.

Spirit of this provision applicable to any similar mehals in Benares.

Rules stated not enacted for western provinces, and probably not required therein.

Observations upon the few amendments made in the laws and usages of the country, in matters of contract and inheritance.

The provisions above cited from Regulation 11, 1793, were re-enacted for Benares, by Regulation 44, 1795, to be in force from the commencement of the Fussyly year 1204. But it having been since found that the succession to landed estates, situated on the hilly and woody frontier of Midnapore, and other districts (known under the denomination of jungul mehals<sup>1</sup>) has, for a long period, invariably devolved to a single heir; and this custom appearing to be founded in circumstances of local convenience, which still exist; it is enacted by Regulation 10, 1800, that "Regulation 11, 1793, shall not be considered to supersede or affect any established usage, which may have obtained in the jungul mehals of Midnapore and other districts, by which the succession to landed estates, the proprietor of which may die intestate, has hitherto been considered to devolve to a single heir, to the exclusion of the other heirs of the deceased. In the mehals in question the local custom of the country shall be continued in full force as heretofore; and the courts of justice be guided by it in the decision of all claims which may come before them to the inheritance of landed property situated in those mehals." This regulation is not expressly extended to Benares; but the spirit of it must be considered applicable to any mehals of the same description within that province; and except them from the rules prescribed in Regulation 44, 1795. No similar rules have been enacted for the more western provinces; and the custom intended to be abolished, or restrained by them, does not perhaps exist in those provinces to an extent requiring, in policy or justice, any alteration of the established principles of succession; whether depending upon written law, or upon immemorial prescription, the foundation of common law; which in England, "for the most part, settles the course in which lands descend by inheritance."<sup>2</sup>

The regulations which have been cited, for supplying ascertained defects in the Mahomedan and Hindoo laws relative to loans and interest; and for carrying them more completely into effect, by the discontinuance of a custom deviating from, if not repugnant to, their general principles, in particular cases of succession; with the provisions that will be specified in a subsequent part of this Analysis, for defining and securing the rights of landlords and tenants; comprise the principal rules which the British Government has yet found it necessary to prescribe, in amendment of the established laws and usages of the country, upon matters of private contract and inheritance. What further remedial or supplementary laws may be required for the ends of civil justice, either as new circumstances arise to call for them, or as judicial experience, and a more perfect knowledge of the Hindoo and Mahomedan laws, may suggest, will, doubtless, be proposed by the courts of judicature, and adopted, if judged expedient, by Government, in the mode provided for by the regulations quoted in the first section. That so small a proportion of the the numerous regulations, which have been enacted since the year 1793, should affect the laws and customs of the country, upon the two extensive legal heads abovementioned, must afford the strongest assurance to the peo-

<sup>1</sup> Which may be freely translated "forest lands;" though *jungul* is commonly applied to any wild territory, or waste ground overrun with trees, brambles, or weeds; and *mehal* is a general term for any division of land, or article of the public revenue.

<sup>2</sup> As well as "the manner and form of acquiring and transferring property; the solemnities and obligation of contracts; the rules of expounding wills, deeds and acts of parliaments; the respective remedies of civil injuries; the several species of temporal offences, with the manner and degree of punishment; and an infinite number of minuter particulars which diffuse themselves as extensively as the ordinary distribution of common justice requires." Vide Blackstone's third introductory section on the laws of England; and particularly what relates to the unwritten or common law, as founded upon custom, general or special, and opposed to the *lex scripta*, or statute law.

ple, that their present governors have no desire to interpose their legislative powers in matters of private right and property without necessity for it; and will, it may be presumed, conciliate their minds to the ready acceptance of any emendatory acts of legislation, which may hereafter be found requisite. A practice, said to be of no long standing, amongst Mahomedans, of settling upon their wives a dower more than equal, in general, to the whole of their estates, whereby the children of a second wife, not endowed, and other dependant relatives, are deprived of any part of the inheritance, may perhaps require some modification of the Mosulman law; which considering *Mihr*, or dower, to whatever amount, as a debt contracted by the deceased, has made it payable from his estate, as far as there may be assets, in preference to any claim of inheritance from the legal heirs; who are consequently often left in distress.\* To guard against frauds, and injury to the real heirs, under the Hindoo law, it may also be advisable to provide for the more strict observance of the "notice to the king," or public magistrate, directed by that law in cases of adoption;† or for such other means as may be effectual to secure the object of such notice; publicity in the transaction to which it refers. For this purpose, it is further directed by the law, that "he who means to adopt a son, must assemble his kinsmen," and the commentator (Jagannátha) justly observes "this is intended to show that a son, known by kinsmen to have been adopted, shall take the inheritance and perform the *fradd'ha* (funeral obsequies) and the like; and they shall not molest him. The notice given to the king is intended for the same purpose." These cases are noticed as having frequently attracted the attention of the sudder dewanny adawlut, in various causes which have come before that court. But a desire to obtain full information, and to ascertain what provisions would be most acceptable to the persons liable to be affected by them, has hitherto prevented the suggestion of any new rule, on either subject, for the consideration of the Governor General in Council.

The Mosulman law of *Mihr*, or dower, may require some modification, under a prevailing practice.

And it may be advisable to provide for a more strict observance of the Hindoo law of adoption.

Reason for noticing these cases.

Doubts having been entertained to what extent the judges of the *zillah* and city courts are authorized to interfere in cases wherein any of the native inhabitants may have left wills at their decease, and appointed executors to carry the same into effect; or may have died intestate, leaving an estate, real or personal; with a view to remove all doubts on the authority of the *zillah* and city courts in such cases, and to apply thereto, as far as possible, the general principle prescribed in Section 15, Regulation 4, 1793, viz. that in suits regarding succession and inheritance, the Mahomedan law with respect to Mahomedans, and the Hindoo law with regard to Hindoos, be the general rules for the guidance of the judges; the following rules were enacted by Regulation 5, 1799; and re-enacted for the ceded provinces in Sec-

R. 5, 1799. re-enacted for ceded provinces in R. 3, 1803, § 6. Limitation of interference of the *zillah* and city courts, in the execution of wills and administration to the estates of persons dying intestate.

\* Vide translation of the Hedaya, Book II. ch. 3. on the "Mihr, or dower."

† See the text of Vasisht's "on the son given" page 320, vol. 3. of the translated digest of Hindoo law.

‡ On the 31st March, 1819, the author of this Analysis, when relinquishing the service of the East India Company, at St. Helena, (on his return to England,) submitted to the Governor General in Council, two draughts of regulations prepared by him on his voyage from Bengal; one entitled, "A regulation for the guidance of the civil courts in determining upon claims of dower;" the other, "A regulation for maintaining a more strict observance of the Hindoo law in cases of adoption. It was suggested, that both draughts should be referred, in the first instance, for the sentiments of the court of sudder dewanny adawlut; and I may here repeat, in the words of my letter to the Chief Secretary of Government, accompanying the proposed regulations—"I shall be happy if, with any amendments which may be suggested by the judges and law officers of that court, they should be considered likely to prove effectual in accomplishing the important objects intended by them."



Section 2.  
When a will may be left, and an executor appointed, and the heir be not subject to the court of wards.

tion 16, Regulation 3, 1803." § 2. "In all cases of a Hindoo, Mussulman, or other person subject to the jurisdiction of the zillah and city courts, having at his death left a will, and appointed an executor or executors, to carry the same into effect; and in which the heir to the deceased may not be a disqualified landholder, subject to the superintendence of the court of wards, under Regulation 10, 1793, or any other regulation relative to the jurisdiction of the court of wards; the executors so appointed are to take charge of the estate of the deceased, and proceed in the execution of their trust, according to the will of the deceased, and the laws and usages of the country, without any application to the judge of the dewanny adawlut, or any other officer of Government, for his sanction; and the courts of justice are prohibited to interfere in such cases, except on a regular complaint against the executors for a breach of trust, or otherwise; when they are to take cognizance of such complaint, in common with all others of a civil nature, under the general rule contained in Section 8, of Regulation 3, 1793; and proceed thereupon according to the regulations; taking the opinion of their law officers upon any legal exception to the executors; as well as upon the provision to be made for the administration of the estate, in the event of the appointed executor being set aside; and generally upon all points of law that may occur; with respect to which the judge is to be guided by the law of the parties, as expounded by his law officers; subject to any modifications enacted by the Governor General in Council, in the form prescribed by Regulation 41, 1793."

Section 3.  
When there may be no will; but the deceased may have left a son, or other heir, intitled to succeed to the whole estate.

§ 3. "In case of a Hindoo, Mussulman, or other person subject to the jurisdiction of the zillah or city courts, dying intestate, but leaving a son or other heir, who, by the laws of the country, may be intitled to succeed to the whole estate of the deceased; such heir, if of age and competent to take the possession and management of the estate, or if under age, or incompetent, and not under the superintendence of the court of wards, his guardian or nearest of kin, who by special appointment, or by the law and usage of the country, may be authorized to act for him, is not required to apply to the courts of justice for permission to take possession of the estate of the deceased, as far as the same can be done without violence; and the courts of justice are restricted from interference in such cases, except a regular complaint be preferred, when they are to proceed thereupon according to the general regulations."

Section 4.  
The same rule applicable to more heirs than one, of a person dying intestate, if they agree in the appointment of a common manager. But in cases of disputed succession, security to be taken from the party in possession. And, in default of security required, possession may be given to other claimants, under security, until the suit be determined.

§ 4. "If there be more heirs than one to the estate of a person dying intestate, and they can agree amongst themselves in the appointment of a common manager, they are at liberty to take possession and the courts of justice are restricted from interference, without a regular complaint, as in the case of a single heir; but if the right of succession to the estate be disputed between several claimants, one or more of whom may have taken possession, the judge, on a regular suit being preferred by the party out of possession, shall take good and sufficient security from the party or parties in possession, for his or their compliance with the judgment that may be passed in the suit; or, in default of such security being given within a reasonable period, may give possession, until the suit be determined, to the other claimant or claimants who may be able to give such security; declaring at the same time that such possession is not in any degree to affect the right of property at issue between the parties; but to be considered merely as an administration to the estate for the benefit of the heirs, who may, on investigation, be found intitled to succeed thereto."

§ 5. "In the event of none of the claimants to the estate of a person dying intestate being able to give the security required by the preceding section, and in all cases wherein there may be no person authorized and willing to take charge of the landed estate of a person deceased, the judge, within whose jurisdiction such estate may be situated (or in which the deceased may have resided, or the principal

Section 5.

In what cases the judge may appoint an administrator,

part of the estate may lie, in the event of its being situated within two or more jurisdictions) is authorized to appoint an administrator for the due care and management of such estate, until, in the former case, the suit depending between the several claimants shall have been determined; or, in the latter case, until the legal heir to the estate, or other person entitled to receive charge thereof as executor, administrator, or otherwise, shall attend and claim the same; when, if the judge be satisfied that the claim is well founded, or if the same be established after any inquiry that may appear necessary, the administrator appointed by the court shall deliver the estate to him, with a full and just account of all receipts and disbursements during the period of his administration." § 6. "In all instances of an administrator being appointed under this regulation, he is, previously to entering upon the execution of his office, to give good security for the faithful discharge of his trust, in a sum proportionate to the extent thereof; and the judge appointing him is authorized to fix for him (subject to the approbation of the court of sudder dewanny adawlut, to whom a report is to be made in such instances) an adequate personal allowance, to be paid out of the proceeds of the estate; and to be a per centage thereupon, after deducting the expenses of management." § 7. "The judges of the zillah or city courts, on receiving information that any person within their respective jurisdictions has died intestate, leaving personal property; and that there is no claimant to such property; are to adopt such measures as may be necessary for the temporary care of the property; and to issue an advertisement in the current languages of the country, requiring the heir of the deceased, or any person intitled to receive charge of his effects, to attend for this purpose. Such advertisement to be published on the spot where the property was found; at the dewanny adawlut cutcherry of the zillah or city; and, if ascertainable, at the dwelling place of the deceased; or if the deceased were an European, in the Calcutta Gazette; after which should any person attend and satisfy the judge of his title to the property, or to receive charge thereof as executor, administrator, or otherwise, the same is to be delivered up to him; on repayment of any necessary expense incurred in the care of it. Should no claim be preferred within the twelve months next ensuing, an inventory of the property, and report of the circumstances of the case, are to be transmitted to the Governor General in Council for his orders."

for the estate,  
of intestates.

Section 6.  
Security to be  
given by such  
administra-  
tors, and al-  
lowance to be  
fixed for them

Section 7  
Judges how to  
proceed, in  
cases of per-  
sons dying in-  
testate, and  
leaving personal  
property, to  
which there  
may be no  
claimant.

Section 8  
Reservation of  
the jurisdiction  
of the court of  
wads

It is further provided, in the concluding section of the regulation above quoted, "that nothing in it is to be understood to limit or alter the jurisdiction of the court of wards in the appointment of managers, or guardians, for the disqualified landholders described in Regulation 10, 1793; or in

<sup>1</sup> The following modified rule, for the case of European British subjects dying intestate, within the jurisdiction of a zillah or city court, is enacted in Section 6, Regulation 15, 1806.—

"Section 7, Regulation 5, 1799, prescribes rules for the guidance of the zillah and city judges, with respect to the charge of the unclaimed assets of estates of Europeans dying intestate. It being however enacted, in Statute 39, George III. Chapter 79, Section 21, that whenever any British subject shall die intestate, and neither a creditor, nor the next of kin, shall apply for letters of administration, the register of the supreme court shall administer to the estate of the deceased; it shall be the duty of the zillah and city judges, whenever any British European subject shall die within the limits of their jurisdictions, and no will shall be found among the effects of the deceased, to report the circumstance without delay to the register of the supreme court of judicature; retaining the property under their charge, until letters of administration shall have been obtained by that officer, or by some other person from the supreme court of judicature, when the property is to be delivered over to the person obtaining such letters; or, in the event of a will being subsequently discovered, to the person who may obtain probate of the will."

Constitution of that court under R. 10, 1793; and R. 52, 1803, for the ceded provinces.

To what persons and estates its superintendence extends.

To what proprietors of estates, its superintendence does not extend.

General manager to be elected by joint proprietors of undivided estates, the whole of whom may not be within the jurisdiction of the court of wards.

R. 1, 1800, In what cases the zillah and city judges, under the control of the sudder dewanny adawlut, may appoint guardians for minor, and other proprietors of shares in joint estates, not subject to the court of wards. Rule to be observed in the selection of such guardians.

And what compensation to be paid for them, in cases requiring it.

Commission to be granted to such guardians; security to be given by them; and obligation to be executed by them. Functions of guardians so appointed.

any case wherein a special power may be vested in the court of wards by the above, or any other regulation." The court of wards, as constituted by Regulation 10, 1793, for Bengal, Behar, and Orissa, and Regulation 52, 1803, for the ceded provinces, being composed of the members of the board of revenue, and board of commissioners; whose duties will form part of the subjects of the third part of this Analysis; it will be sufficient to notice here, that the superintendence of this court "extends to the persons and estates of all proprietors of entire estates, paying revenue immediately to Government, who are or may be females, not deemed by the Governor General in Council competent to the management of their own estates, minors, idiots, lunatics, or others rendered incapable of managing their estates by natural defects or infirmities of whatever nature." But the superintendence of the court of wards is declared "not to extend to proprietors of estates not paying revenue immediately to Government; nor to joint proprietors of estates paying revenue immediately to Government, both or all of whom may not be of the descriptions specified." Joint proprietors of undivided estates, the whole of whom may not be disqualified by sex, minority, or otherwise, from the management of their lands, are required to elect a general manager; in the choice of whom the guardians of minors, lunatics, idiots, or others having guardians, are entitled to vote for their wards. It is also provided by Regulation 1, 1800, that "in all cases of joint undivided estates, when one or more of the proprietors shall die, leaving heirs who are under age, lunatics, or idiots; and without nominating by will, a guardian or guardians to the heirs; it shall be the duty of the judge, within whose jurisdiction such estate may be situated (or the principal part of it, in the event of its being situated in two or more jurisdictions) on the receipt of a report from the collector, or from any other person or persons interested in the welfare of the family of the deceased, stating the grounds on which he or they may consider the next of kin as unfit to be entrusted with the care of the person, or management of the estate, of the heir, to investigate the nature of the objections to the nearest of kin; and if satisfied, that they are well founded, the judge shall nominate some other person of character and respectability to act as guardian of the heir; reporting the circumstance in every instance to the court of sudder dewanny adawlut. In the selection of guardians to be appointed under this regulation, the judge is to attend particularly to their capacity, character, and responsibility; but the guardianship is in no instance to be entrusted to the legal heir of the ward, or other person interested in outliving him. It is expected that some friends of the family to the deceased will gratuitously discharge the trust of guardian; but if, on any occasion, it may become necessary to make a pecuniary compensation to the person appointed to act as guardian, the amount of such compensation is to be fixed by the judge on a due consideration of the circumstances of the case." The guardians so appointed are to be furnished with a commission under the official seal and signature of the judge; previously to the delivery of which they are to give security for their appearance during the continuance of their trust; and are to execute a solemn obligation for the zealous and faithful discharge of it. They are to have the care of the persons, maintenance, and, if minors, the education of their wards; are to vote in the election of a manager for the joint undivided estate; and are to receive from the latter such portion of the profits arising from the estate, as their wards

<sup>1</sup> See Title, *Court of Wards*, in Vol. II. page 103.

<sup>2</sup> In the upper provinces and Cuttack, the superintendence of the Court of Wards extends also to the proprietors of entire estates, "who are, or may be deemed disqualified on account of notoriously bad character." Vide 2d Vol. p. 105.

may be entitled to, on a fair distribution. "If any person shall think himself aggrieved by any act done by any of the zillah judges in the exercise of the authority vested in them by this regulation; he is at liberty to state his complaint by petition, either to the judge in person, or to the court of sudder dewanny adawlut, and whenever any such complaint shall be made, the judge is to certify a copy of the petition, and of all his proceedings in the case to which it relates, to that court; who are authorized to confirm or rescind his decision as to them shall appear just and proper; and their judgment in all such cases is declared to be final." It has not been deemed necessary to extend the authority of the court of wards to the province of Benares. But the provisions above quoted from Regulation 1, 1800, for the appointment of guardians by the courts of justice, were enacted for that province; as well as for Bengal, Behar, and Orissa: and they have been re-enacted for the ceded and conquered provinces, in the eighth and succeeding clauses of Section 27, Regulation 8, 1805.

Persons aggrieved by acts of the zillah (or city) judges in the exercise of the powers vested in them, how to obtain redress.

Authority of court of wards not extended to Benares. But provision of R. 1, 1800, enacted for that province, and re-enacted for ceded and conquered provinces in R. 8, 1805, § 27.

### *Registry of Deeds.*

With a view to give security, and prevent frauds, in the transfer of lands, houses, and other immovable property, by sale or gift; as well as in the mortgage, lease, or other assignment, of such property; and to afford all persons the means of guarding against litigation, respecting the authenticity of their wills, or of the written authorities which Hindoos sometimes grant to their wives for the adoption of sons after their own decease; an office for the registry of deeds, in each of the zillahs and principal cities, was established by Regulation 36, 1793; (extended to Benares by Regulation 28, 1795; and to Cuttack by Section 32, of Regulation 12, 1805;) and re-enacted for the ceded provinces in Regulation 17, 1803. The superintendence of this office is committed to the register of the zillah or city court; who is bound by oath to the faithful execution of it, under the following rules prescribed for his guidance—

R. 36, 1793, extended to Benares by R. 28, 1795, and to Cuttack by R. 12, 1805. Re-enacted for ceded provinces in R. 17, 1803. Purpose of establishing an office for the registry of deeds, in each zillah and city. Section 2. Superintendence of it, to whom committed. Oath prescribed.

§ 2. "The register shall take and subscribe the following oath before the judge of the zillah or city, previous to his entering on the execution of the duties of the office.

"I, A. B. solemnly swear, that I will truly and faithfully execute the office of register of deeds for the zillah or city of—, and that I will not directly nor indirectly derive any pecuniary or other benefit whatsoever from the said office, excepting such as is or may be allowed to me by this regulation, or by any regulation that may be hereafter passed by the Governor General in Council, and printed and published in the manner directed in Regulation 41, 1793." "So HELP ME GOD." § 3. "First. The register is authorized and required to register memorials of the following deeds. Second. Deeds of sale, or gift, of lands, houses, and other real property. Third. Deeds of mortgage on lands, houses, and other real property, as well as certificates of the discharge of such incumbrances. Fourth. Leases and limited assignments of land, houses, and other real property, including generally all conveyances used for the temporary transfer of real property. Fifth. Wusseatnamahs or wills. Sixth. Written authorities from husbands to their wives to adopt sons after their (the husbands) demise." § 4. "It shall be left to the option of all persons to register or not, as they may think proper, any of the descriptions of deeds specified in the preceding section, that have been execut-

Section 3. Memorials of what deeds to be registered.

Section 4. Option left of registering any of the deeds specified, if

executed prior to 1st January, 1796.

Section 5.  
Certain deeds, whether executed before or after 1st January, 1796, may be registered or not at the option of the parties.

Section 6.  
Deeds of sale, gift, or mortgage, executed subsequent to the 1st January, 1796, to have a preference if duly registered.

But this rule is not applicable to cases in which persons may purchase, take or gift, or mortgage property, knowing it to have been previously sold, given, or mortgaged subsequent to the 1st January, 1796.

Section 7.  
In what office deeds are to be registered.

Section 8.  
Deeds to be registered in separate books, and attested as directed.

ed, or which may be executed, prior to the 1st of January, 1796.<sup>1</sup> The not registering such deeds, shall in no wise operate to the prejudice of the rights of the parties thereto, which shall remain the same as if this regulation had never been enacted." § 5. "It shall also be left to the option of all persons to register or not, as they may think proper, the several descriptions of deeds specified in Clauses Fourth, Fifth, Sixth, of Section 3, whether executed previous or subsequent to the 1st January, 1796. The not registering of the deeds specified in those three clauses, shall in no wise operate to the prejudice of the rights of the parties thereto, which shall remain the same as if this regulation had never been enacted." § 6. "*First.* Every deed of sale, or gift, of the description specified in Clause Second, Section 3, that may be executed on or after the 1st January, 1796, and a memorial of which shall be duly registered according to this regulation, shall, provided its authenticity be established to the satisfaction of the court, invalidate any other deed of sale or gift for the same property, executed subsequent to the said date, which may not have been registered, and whether such second or other deed shall have been executed prior or subsequent to the registered deed, *Second.* Every deed of mortgage of the description specified in Clause Third, Section 3, that may be executed on or after the 1st January, 1796, and a memorial of which shall be duly registered according to this regulation, and provided its authenticity be established to the satisfaction of the court, shall be satisfied in preference to any other mortgage on the same property executed subsequent to the said date which may not have been registered, and whether such second or other mortgage shall have been executed prior or subsequent to the registered mortgage. *Third.* It being the object however of the rules in the two preceding clauses, to prevent persons being defrauded by purchasing, or receiving in gift, or taking in mortgage, real property which may have been before sold, given, or mortgaged, subsequent to the 1st January, 1796, and as persons can never suffer such imposition when they are apprized of the previous transfer or mortgage of the property, it is to be understood, that if any person shall purchase, receive in gift, or take in mortgage, any real property, knowing such property to have been previously sold, given, or mortgaged, to any other person subsequent to the 1st January, 1796, and that the deed of sale, gift, or mortgage, has not been registered, and shall register his own deed, in such case the deed of sale, gift, or mortgage of such subsequent purchaser, donee, or mortgagee, which may have been registered, shall not from the registry of it, invalidate, or be discharged in preference to the unregistered deed of sale, gift, or mortgage, first executed, provided the authenticity of the latter be established to the satisfaction of the court." § 7. "The registry of all deeds shall be made in the register office of the zillah or city in which the property affected by them may be situated, and if the property be situated in the jurisdictions of two or more of the courts of dewanny adawlut, the deeds affecting it, shall be registered in the office of each jurisdiction." § 8. "*First.* Each species of deed shall be registered in a separate book, each leaf of which shall be paged, and be attested by the judge of the dewanny adawlut of the zillah or city, who shall note in his own hand-writing on the last page of each book, the number of

<sup>1</sup> The 24th March, 1806, is substituted for the operation of Regulation 17, 1803, in the ceded provinces: and the 1st January, 1808, is substituted for zillah Cuttack, in Section 32, Regulation 12, 1805.

<sup>2</sup> It was further declared by Government, (on a reference from the sudder dewanny adawlut, under date the 14th November, 1788), that although all deeds duly presented for registry under this regulation are to be registered, they derive no validity from the registry, if invalid under any other regulation in force.

pages contained in each book, and attest the note with his official signature. No register shall be deemed authentic, excepting such as shall be so paged and attested. *Second.* Every deed entered in a register book shall be numbered, and the date of the month and the year, as well as the time of the day when every deed may be registered, shall be noted in the margin of the register books, which shall be deposited amongst the records of the dewanny adawlut." § 9. "*First.* The following forms shall be observed in the registry of deeds. *Second.* The person or persons executing the deed, or his or their authorized representative, with one or more of the witnesses to the execution of it, shall attend at the register office, and prove by oath before the register, the due execution of the deed; upon which, the register shall cause an exact copy of the deed to be entered in the proper register book, and, after having caused it to be carefully compared with the original, shall attest the copy with his signature, and shall also cause the parties, or their authorized representatives in attendance, to subscribe their signatures to the copy, in the presence of two creditable witnesses, (whose names shall also be subscribed thereto) and shall then return the original, with a certificate under his signature endorsed thereon, specifying the date, and the time of the day on which such deed shall have been so registered, with references to the book containing the registry thereof, and the page and number under which the same shall have been entered therein." § 10. "The certificate of the register, endorsed agreeably to the forms described in Clause Second of the preceding section, shall be considered in all courts of justice to be sufficient evidence of the registry." § 11. "The register shall on application being made to him, allow all persons to inspect the register books, as well as grant copies of all deeds registered by him to persons whom they may concern, and such copies in the event of the originals being lost, destroyed, or not forthcoming, shall be received as sufficient evidence of such deeds in all courts of justice whatever, proof being made by the subscribing witnesses to the original deed, that the original was duly executed." § 12. "If any person or persons shall at any time be suspected, on sufficient grounds for commitment, of counterfeiting or falsifying any entry in any of the register books ordered to be kept, or any certificate such as is directed to be granted, by this regulation, he or they shall be prosecuted on the part of Government in the criminal court of judicature, and the several registers shall, as agents for the prosecution, adopt every legal measure in their power for the proof of the crime, and the due execution of the laws against the offender." § 13. "Every register shall attend at his office for the dispatch of all business belonging thereto, during certain specified hours each day, between sunrise and sunset (Sundays and holidays excepted) and after determining the particular hours of such attendance, he shall affix a written notice in some conspicuous part of his office for general information." § 14. "The register shall be allowed a fee of two rupees for every deed registered by him, to be paid by the party causing the same to be registered, and no more; a fee of one rupee for every copy furnished of a deed registered by him, to be paid by the party applying for such copy, and no more; and a fee of half a rupee for every search made on an inspection of the register, to be paid by the party inspecting the same, and no more. The register is authorized to refuse the official acts required from him until these fees be paid, and from such fees he shall provide the necessary native officers to make the entries and copies directed, as well as the requisite stationary." § 15. "The several registers are permitted in case of absence from their stations, sickness, or any other disqualification from personal attendance to the duties of their office, to appoint (with the approbation of the judge to whom they may be registers respectively) a deputy being a covenanted servant of the Company, and duly qualified to act for them, and such

Deeds registered to be numbered. Date of the registry, &c. to be noted in the margin of the register. Registers to be deposited in court. Section 9. Forms to be observed in the registry of deeds.

Section 10. What certificates to be deemed evidence of registry of deeds.

Section 11. Register to allow persons to inspect the books.

To grant copies of deeds which shall be considered evidence of originals, duly proved.

Section 12. Persons counterfeiting or falsifying entries in the register books or certificates to be prosecuted criminally.

Section 13. Hours for the registry of deeds.

Section 14. Fee to be allowed to the register for registering deeds, furnishing copies, and making searches.

Register may refuse to perform the official acts required of him until the fee be paid.

To defray the expense of the office from the fees.

Section 15. Registers may appoint deputies to officiate for them in the cases and under the rules

herein specified.

Section 16. Regulation to be in force from the 1st January, 1796, and translate of it to be sent to all the cauzies of the provinces. Additional rules enacted in Regulation 20, 1812. Preamble to that regulation.

Section 2. Rules to be observed in registering deeds.

deputy so appointed, and approved, after taking a similar oath to that prescribed for the register, shall be authorized to perform the several acts which the register is hereby empowered to perform. This permission however is to be expressly confined to the cases stated, and the registers, when present at their stations, are not to be allowed to employ any deputy, but are to be required to discharge personally, the duties of the office committed to them."

§ 16. "This regulation is to be in force from the 1st January, 1796, and the judges of the several zillahs and cities in Bengal, and Orissa, are to transmit a copy of the Persian and Bengal translate of it to every cauzy in their jurisdiction, and the judges of the zillahs in Behar, and of the city of Patna, are to transmit a copy of the Persian translate of it, to each of the cauzies in their respective jurisdictions."

The following additional rules were enacted in Regulation 20, 1812, for modifying some of the provisions above stated; and for establishing a register of engagements for the delivery of Indigo. The grounds on which this regulation was founded are stated in the preamble as follows:—"Whereas Regulation 36, 1793, extended to Benares by Regulation 28, 1795, and Regulation 17, 1803, contain provisions for registering memorials of deeds of sale or gift of lands, houses, and other real property; of deeds of mortgage on land, houses, and other real property, as well as certificates of the discharge of such incumbrances; of leases and limited assignments of land, houses, and other real property, including generally all conveyances used for the temporary transfer of real property; of wusseat-namahs or wills, and written authorities from husbands to their wives to adopt sons after their (the husband's) demise; and whereas inconvenience has been experienced from the delay attendant on the forms at present established for registering the said deeds; and whereas it will tend to obviate disputes and prevent frauds in the performance of engagements for the delivery of indigo, to afford to the parties, or either of them, the means of registering such engagements; and whereas the convenience of the public will be further promoted by the establishment of a separate register of obligations for the payment of money; the following rules have been enacted, to be in force from the period hereafter specified, throughout the territories dependent on the presidency of Fort William."

§ 2. "First. Whenever any person may be desirous of procuring any deed of the description of those specified in Section 3, Regulation 36, 1793, and in the corresponding rules of Regulation 17, 1803, to be registered, he shall attend either in person, or by an authorized representative, at the office of the register, with the original deed and an exact copy of it, attested by one at

<sup>1</sup> It is provided in Section 16, R. 17, 1803, for establishing a registry office in the provinces ceded by the Newab Vizeer, (which was passed on the 24th March, 1803; and extended to the conquered provinces by Section 17, R. 8, 1805) that "the operation of this regulation shall not commence until the period of three years shall have elapsed from the date of its being passed."

<sup>2</sup> A question having arisen, whether the copies of deeds brought for registry under this rule are required to be written on stamp paper, (under the provisions for stamp duties stated in the third volume of this Analysis, p. 152) the court of sudder dewanny adawlut, in a circular letter from their register to the zillah and city courts, dated 22d April, 1813, expressed their opinion "that the copies in question being intended merely for record, should be admitted to be drawn out on plain paper." It was added however, in another circular letter from the register of the sudder dewanny adawlut, dated 1st June, 1815, that "where authenticated copies of the legal documents specified in Section 11, R. 1, 1814, are required as legal vouchers, to be exhibited instead of the originals, the copies must be written on the same stamp paper as the originals, in conformity with Section 18, R. 26, 1814, whether prepared by a cauzee, or mooftee, or by any other authorized person." See the regulation here referred to, under title of *Stamp Duties*.

least of the parties to the instrument, and by one of the witnesses to the execution of it. The register, after having adopted the prescribed measures for ascertaining the validity of the original, and having compared with it the copy above required to be furnished, shall without loss of time specify, on the back of the latter, the date and hour of the day on which it was presented for the purpose of being registered, and shall cause it to be filed according to the order of time in which it may have been received, and entered in the register book according to the same order, certifying in the said book the day and hour on which the entry was completed and inspected by him. *Second.* On completion of the entry in the manner above stated, the register shall return the original deed to the person from whom it may have been received, with a certificate under his signature endorsed on the deed, specifying the date and the hour of the day on which it was registered, and the page on which it is entered in the register book. *Third.* The entry in the register book shall, in all practicable cases, be made at the time of endorsing the copy required to be furnished; but the insertion of it shall on no account be postponed beyond the day on which the endorsement may be made. *Fourth.* The register shall, on application being made to him, allow all persons to inspect the copies of deeds attested, endorsed, and filed in the manner prescribed in the preceding clause, as well as the register books. *Fifth.* In like manner, the register shall, on application being made to him, grant copies of all engagements registered by him to persons whom they may concern; and such copies, in the event of the originals being lost, destroyed, or not forthcoming, shall be received as sufficient evidence of such deeds in all courts of judicature whatever; proof being made by the subscribing witnesses to the original deed, that the original was duly executed." § 3. "*First.* The person holding the office of register of deeds for the conveyance of landed property is likewise hereby authorized and required, from and after the 1st of January, 1813, corresponding with the 19th Poose 1219 Bengal era; the 14th Poose 1220 Fussily; the 20th Poose 1220 Willaity; the 14th Poose 1869 Sumbut; and the 27th Zeheza 1227 Higeree, to register engagements contracted by indigo planters, whether Europeans or natives, with the ryots and others for the delivery of the indigo plant. *Second.* A separate register book shall be kept for the registry of contracts of the description of those specified in the preceding clause. *Third.* It shall be optional with persons contracting engagements for the delivery of indigo to register them, or not, as they may judge proper; but every engagement contracted for the delivery of indigo after the 1st day of January, 1813, which may be duly registered according to the provisions of this regulation, shall, in case it be in other respects a legal and bonâ fide engagement, be satisfied in preference to every other contract for the delivery of indigo, being the produce of the same ground, which may not have been registered, whether the last mentioned deed shall have been executed previously or subsequently to the registered deed. *Fourth.* Whenever any person may be desirous of procuring any engagement for the delivery of indigo to be registered, he shall attend either in person, or by an authorized representative, at the office of the register, with the original deed and an exact copy of it, attested by one at least of the parties to the instrument, and by one of the witnesses to the execution of it. The register, on having ascertained by evidence on oath that the original was duly executed, and having compared with it the copy above required to be furnished, shall without loss of time, specify on the back of the latter, the date and hour of the day on which it was presented for the purpose of being registered, and shall cause it to be filed according to the order of time in which it may have been received, and entered in the register book according to the same order; certifying in the said book, the hour and day on which the entry

Original deed to be returned with a certificate endorsed thereon.

The entry in the register book to be made within the day on which the endorsement is made.

All persons allowed to inspect the filed copies and register book. Copies to be granted and such copies to be received in evidence in case of the originals being lost or destroyed.

Section 3. Engagements contracted with indigo planters for delivery of indigo plant to be registered.

A separate register book to be kept for such engagements.

It shall be optional with persons contracting indigo engagements to register them or not, but registered engagements shall be satisfied in preference to others.

Rules for the registry of such engagements.



The original deed to be returned with a certificate endorsed thereon.

All persons allowed to inspect the filed copies and register book.

Copies of registered engagements shall be granted on application, and such copies to be received in evidence should the originals be lost or destroyed. Section 4. Fees allowed to the register for each engagement.

Section 5. Registry of bonds, notes, or other money engagements.

A separate register book to be kept for such obligations.

What rules applicable to the registry of such obligations.

Section 6. Certain part of Section 8, R. 36, 1793, rescinded.

The endorsement on copies of deeds kept under this regulation and the transcripts thereof in the register book, to be countersigned by the judge, and at what period.

was completed and inspected by him. The entry in the register book shall, in all practicable cases, be made at the time of endorsing the copy required to be furnished; but the insertion of it shall on no account be postponed beyond the day on which the endorsement may be made. *Fifth.* On completion of the entry in the manner above stated, the register shall return the original deed to the person from whom it may have been received, with a certificate under his signature endorsed on the deed, specifying the date, and the hour of the day, on which it was registered, and the page on which it is entered in the register book. *Sixth.* The certificate of the register, endorsed on the original deed, in the manner stated in the preceding clause, shall be deemed in all courts of judicature sufficient evidence of the registry. *Seventh.* The register shall, on application being made to him, allow all persons to inspect the copies of engagements for the delivery of indigo attested, endorsed, and filed in the manner prescribed in Clause Fourth, of the present section of this regulation, as well as the register book in which such engagements may have been entered. *Eighth.* In like manner the register shall, on application being made to him, grant copies of all engagements registered by him to persons, whom they may concern; and such copies, in the event of the originals being lost, destroyed, or not forthcoming, shall be received as sufficient evidence of such deeds in all courts of judicature whatever; proof being made by the subscribing witnesses to the original deed, that the original was duly executed." § 4. "The register shall be allowed a fee of two rupees for every engagement registered by him, to be paid by the party causing the same to be registered, and no more; a fee of one rupee for every copy furnished of a deed registered by him, to be paid by the party applying for such copy, and no more; and a fee of half a rupee for every search made on an inspection of the register book, to be paid by the party inspecting the same, and no more. The register is authorized to refuse the official acts required from him until these fees be paid, and from such fees he shall provide the necessary native officers to make the entries and copies directed, as well as the requisite stationary." § 5. "*First.* The person holding the office of register of deeds is likewise hereby authorized and required, from and after the 1st of January, 1813, corresponding with the 19th Poose 1219 Bengal era; the 14th Poose 1220 Fussily; the 20th Poose 1220 Willaity; the 14th Poose 1869 Sumbut; the 27th Zeheza 1227 Higeree; to register bonds, promissory notes, and generally all obligations for the payment of money. Provided however, that such registry shall only be made on the application, in person or by representative, of the party by whom the said bonds, promissory notes, or other obligations, may have been executed. *Second.* A separate register book shall be kept for the registry of obligations of the description of those specified in the preceding clause. *Third.* The rules contained in Clauses Fourth, Fifth, Sixth, Seventh, and Eighth, of Sections 3, and 4, of the present regulation, shall be considered applicable to the registry of bonds, promissory notes, and other obligations for the payment of money, with the restriction already stated, respecting the party on whose application such registry is to be made." § 6. "*First.* Such part of Section 8, Regulation 36, 1793, and of the corresponding rules in Regulation 17, 1803, as requires that each leaf of the different register books shall be attested by the judge of the zillah or city court, is hereby rescinded. *Second.* In order at the same time to establish a proper control over the conduct of the public officers entrusted with the discharge of the duty of registering deeds, it is hereby enacted, that the endorsement on the copies required to be kept of the said deeds by the provisions of this regulation, and the transcripts thereof in the register book, shall be both countersigned by the judge of the adawlut, within one month of the date of registry; unless prevented by ab-

sence; and in that case within one month after his return. *Third.* On affixing his name to the copies of the deeds and to the register books, it shall be the duty of the judge to report to the Secretary to Government in the judicial department, for the information of the Governor General in Council, any errors or irregularities, or any deviation from the established regulations, which he may have discovered in the conduct of the business confided to the register of deeds, or to his native officers." § 7. "It is hereby declared, that the registers are not warranted in registering deeds of any description, excepting those specified in Regulation 36, 1793, and Regulation 17, 1803, and in the present regulation. The register books shall in future be uniformly made of English paper, and carefully bound." § 8. "It shall be the duty of the registers to keep an accurate account, in the English language, of the fees received by them on account of the registry of deeds." § 9. "It shall likewise be the duty of the register to prepare, as soon after the expiration of each English year as possible, an index to the register books." § 10. "The registers are also hereby required, not only to preserve with care the powers of attorney which may be produced by persons attending on the behalf of others to procure deeds to be registered, but likewise to cause all such powers to be regularly entered in a separate book, to be kept for that purpose."

The judge to report to Government, any irregularities he may discover in the conduct of the business.  
 Section 7. Registers not to register any deeds but those prescribed.  
 Books to be of English paper and bound.  
 Section 8. Registers to keep an account of fees.  
 Section 9. And to prepare an annual index.  
 Section 10. Also to preserve and enter all powers of attorney for registering deeds.

### Office of Cauzy.

The judicial functions, which appertained to the office of cauzy-ul-cuzzat, or head cauzy, and, in some instances to that of inferior cauzies, under the Mahomedan government,<sup>1</sup> have been discontinued since the establishment of courts of justice under the superintendence of British judges; and with an exception to the law officers, attached to the civil and criminal courts, the general duties of the present cauzies, stationed at the principal cities and towns, and in the pergunnahs which compose the several zillahs or districts, are confined to the preparation and attestation of deeds of conveyance, and other legal instruments; the celebration of Mosulman marriages; and the performance of the ceremonies prescribed by the Mahomedan laws, at births and funerals; or other rites of a religious nature. They are eligible, however, under the regulations, to be appointed commissioners for the sale of property distrained on account of arrears of rent; as well as commissioners for the trial of civil causes; and are also entrusted by Government, in certain cases, with the payment of public pensions. It is therefore necessary that persons of character, who may be duly qualified for the subsisting office of cauzy, should be appointed to that station; and encouraged to discharge the duties of it with diligence and fidelity; by not being liable to removal, without proof of incapacity or misconduct. The cauzy-ul-cuzzat, or head cauzy of the several provinces under this presidency, and the cauzies stationed in the cities, towns, or pergunnahs within those provinces, were accordingly declared by Regulations 39, 1793, and 46, 1803, not to be removable from their offices, except for incapacity or misconduct in the discharge of their public duties, or for acts of profligacy in their private conduct; and the rules subsequently enacted in Regulation 5, 1804, and 8, 1809, concerning the appointment and removal of the law officers of the courts of justice, were extended to the local cauzies, by Section 10 of the former re-

Present duties of the city, town, and pergunnah, cauzies.

Eligible to be commissioners for sale of distrained property; and for trial of civil causes.  
 Also entrusted with payment of pensions, in certain cases.

Rules for appointment and removal of cauzies, in R. 39, 1793, extended to Benares by R. 45, 1795; and re-enacted for ceded provinces in R. 46, 1803. Modified by R. 5, 1804, and R. 8, 1809.

<sup>1</sup> See Hamilton's translation of the *Hedaya*, Vol. 2. Book 20. *On the duties of the Kasee.*

In what manner vacancies to be filled.

Reference to be made to head cauzy.

And report to be made by that officer in cases of misconduct, or incapacity, of any city, town, or pergunnah, cauzy, as well as by judges of the zillah, city, and provincial courts.

R. 39, 1793, § 7. R. 46, 1803, § 7.

Copies and lists of attested deeds and law papers to be kept by cauzies and delivered to their successors.

Former tax, and cauzy's fee, on marriages, abolished in 1772; and free gifts only allowed, for performance of nuptial or funeral ceremonies.

R. 39, 1793, § 8. R. 46, 1803, § 8. The same principle continued in existing provisions for a voluntary fee only.

Section 11. Cauzies declared liable to a civil action for any undue practices.

Fees and presents to officiating Hindoo priests, also left to will of the parties.

gulation; and Section 4, of the latter.<sup>1</sup> At the same time the office of cauzy is declared (in Section 5, of Regulation 39, 1793, and 46, 1803, respectively) "not to be hereditary;" and it is further provided in these regulations, that when the office of cauzy in any pergunnah, city, or town, shall become vacant, the judge, within whose jurisdiction the place may be situated, is "to recommend such person as may appear to him best qualified for the succession from his character and legal knowledge. The name of the person so recommended is to be communicated to the head cauzy; who, "if he shall deem him unqualified for the office, either from want of legal knowledge, or the badness of his private character, is to report the same in writing." It is likewise "the duty of the heady cauzy to report every instance in which it may appear to him that the cauzy of any city, town, or pergunnah, is incapable; or in which any such cauzy may have been guilty of misconduct in the discharge of his public duty, or acts of profligacy in his private conduct." And a similar report is required to be made by the judges of the zillah, city, and provincial courts, to the court of sudder dewanny adawlut, with whom it rests to confirm the appointment, or removal, of the cauzies of cities, towns, and pergunnahs, under Section 4, Regulation 8, 1809.

"The head cauzy and the cauzies stationed in the cities, pergunnahs, and towns, are to keep copies of all deeds, and law or other papers, which they may draw up or attest; and are to affix thereto their seal and signature. They are likewise to keep a list of all such papers; and in the event of their death, resignation, or removal, the list and papers are to be delivered complete to their successors." A tax upon marriages which had been levied by the former government, at a rate varying from three to four rupees, was abolished by the committee of circuit in the year 1772, as injurious to the population of the country; and with a view to encourage matrimony, the marriage fees, which were then received by the cauzies, at the established rates of two rupees from the principal inhabitants, one rupee eight annas from the middling class, and one rupee from the lower classes, were ordered to be discontinued. The cauzies and moofies employed at fixed salaries, as officers of the courts of justice, were directed to attest all writings, and to perform all ceremonies of marriages, births, and funerals, without exacting any fees whatever. But the prohibition was declared not to extend to any present, or gratification, made on the occasion of a marriage, or funeral, with the entire free will of the party.<sup>2</sup> In pursuance of this principle, it is provided by Section 8, Regulation 39, 1793, and 46, 1803, that "the cauzies stationed in the cities, towns, and pergunnahs, are not to exact any fees for drawing up or attesting papers, or for the celebration of marriages, or the performance of any religious duties, or ceremonies which it has been customary for them to perform, excepting such as the parties concerned may voluntarily agree to pay; as has been hitherto the practice." They are at the same time declared liable to be sued in the civil courts "for any undue practices in the discharge of the duties prescribed to them." It may be added that the fees and presents to the officiating priests at Hindoo marriages, funerals, and other ceremonies, are in like manner left to be determined by the will of the parties; and are usually proportioned to their rank and circumstances. As every

<sup>1</sup> The provisions of the two regulations here referred to are detailed in the second volume of this Analysis, under the head of *Native Officers*, p. 153. and Sequel.

<sup>2</sup> Vide letter from the committee of circuit to the Governor and Council, dated 15th August, 1772; And article 93 of the plan for the administration of justice, which accompanied it. Appendix No. 2, to the fifth report from committee of secrecy, 1773.

Hindoo family has its proper *purohit*, or priest, who assists in the performance of all sacred or solemn rites, it would be obnoxious, if not impracticable, to frame any regulation, either for the appointment of the Hindoo priesthood; or for limiting the compensation to be received by them; and experience has not shown that any alteration of established usage, in these respects, is required.

The only further rule, which it appears necessary to cite from Regulations 39, 1793, and 46, 1803, is that which directs the zillah and city judges to furnish the cauzies stationed in their respective jurisdictions, with translations in the Persian and vernacular languages "of all regulations printed and published in the manner directed in Regulation 41, 1793." The importance of publishing for general information, in a language known to the natives of the country, all regulations affecting their rights, or persons, has been already adverted to.<sup>1</sup> And the first part of this Analysis, relative to civil justice, may be closed with a remark, that the rule for furnishing the city, town, and pergunnah cauzies, with translations, in the current languages, of all new regulations, being obviously intended to promote their publication, for the benefit of the people liable to be affected by them, it should be most carefully observed. To maintain its intended effect, whenever a cauzy may be appointed, it should be an invariable rule to deliver over to him the whole of the regulations which may have been received by his predecessors. The inhabitants can then never be at a loss where to apply for information of the laws and rules in force, upon any subject; and were a similar practice adopted, with respect to the police officers and moonsiffs; or the former supplied with all regulations concerning criminal justice and police; the latter with all other regulations; and both required, under penalties, to deliver them complete to their successors; it would essentially promote the important purpose of the legislative provisions, which have been stated, for promulgating "all regulations passed by Government, affecting in any respect the rights, persons, or property, of their subjects;" and enabling "individuals to render themselves acquainted with the laws, upon which the security of the many inestimable privileges and immunities granted to them by the British Government, depends."<sup>2</sup>

And no regulation of them, or of appointment of the Hindoo priesthood, appears necessary or expedient.

R.39, 1793, §10.  
R.46, 1803, §10.  
Rule for furnishing translations of all new regulations to the city, town, and pergunnah cauzies.

Importance of a careful observance of this rule. And suggestion, for maintaining its intended effect. That the natives may know the laws, upon which the security of their rights and privileges depends.

<sup>1</sup> In note subjoined to pages 11 and 12.

<sup>2</sup> Since this remark was written, (in 1805,) it has been provided by Section 31, Regulation 8, 1805, and Section 12, Regulation 11, 1806, that the zillah and city judges and magistrates shall cause the translations of the regulations in the country languages, which they are required to furnish to the cauzies in their respective jurisdictions, "to be read and published for general information at the cutcherries of the native commissioners, empowered to act as moonsiffs, and of the police darogahs, or tehseldars in charge of the police." See note to pages 11 and 12.

The following resolutions of the Governor General in Council passed on the 3d February, 1809, with a view to the improvement of the administration of justice in the territories immediately dependent upon the presidency of Fort William, were inserted at the conclusion of the judicial parts of this Analysis, in the first edition, (vol. 1, page 653,) and are therefore subjoined in this place; although circumstances have not admitted of the intended arrangement being carried into effect.

"First. That a professor of law be appointed for the instruction of the junior branch of the Company's servants in the principles of jurisprudence.

"Second. That the professor of the regulations be requested to commence a course of lectures on the regulations.

"Third. That the servants of the Company, who on quitting the college may make choice of, or be selected by Government, for the judicial department, be attached to the sudder dewanny adawlut and nizamat adawlut, until their services are actually required in the interior of the country.

"Fourth. That the offices of first and second assistant to the register of those courts, as at present constituted, be abolished.

“ *Fifth.* That the assistants attached to the sudder dewanny adawlut and nizamut adawlut be examined half yearly by the judges of the sudder dewanny adawlut, jointly with the professor of the regulations, as to their knowledge of the regulations ; and of the practical duties of registers, judges, and magistrates ; and that the result be regularly reported to the Governor General in Council.

“ *Sixth.* That those assistants be in like manner examined half yearly by the advocate general, jointly with the professor of law, as to their knowledge of the general principles of jurisprudence ; and of the duties and powers of a justice of the peace ; and that the result be reported to Government.

“ *Seventh.* That the sudder dewanny adawlut and nizamut adawlut be requested to cause the reports of the causes and trials adjudged by them, to be prepared with punctuality, by the assistants attached to those courts ; to make a selection from the reports already prepared, for publication, without loss of time ; and to cause a similar publication to be made periodically in future.

“ *Eighth.* That the servants of the Company, who on quitting the college may enter on their course of service in the judicial department, rise only in that department ; and that, in like manner, those persons who may enter into the revenue department, rise only in that branch of the service.”

END OF FIRST PART.

## SECOND PART.

### SECTION I.

#### MOHUMMUDAN CRIMINAL LAW.

THE courts of judicature, established on the part of the East India Company, throughout their territorial possessions, are required, in the administration of criminal justice, to be guided by the Mahomedan, or as more correctly written, Mohummudan law; excepting cases, wherein a deviation from it may have been expressly authorized by the regulations of the British Government. It will therefore be useful to give a general view of such parts of the Mohummudan law, as have immediate relation to crimes and punishments; previously to exhibiting the amendments of it, which have been enacted by the regulations of the Governor General in Council. The reasons, which led to such amendments, will, by this means, be rendered more intelligible; and the expediency of the provisions, which have been made for an efficient administration of criminal justice, will be more clearly and easily appreciated. It may further tend to bring into notice such defects in the penal laws of the country as still remain to be remedied.

Laws in force for the administration of criminal justice, in the Company's courts of judicature. Reasons, in consequence, for giving a general view of the Mohummudan penal law.

The basis of Mohummudan law, religious, civil, and criminal, is the Koran; believed to be of divine origin, and to have been revealed by an angel to Mohummud; who caused it to be written and published, from time to time, as occasion required, for the refutation of his opponents, or the instruction and guidance of his followers: though the hundred and fourteen *Soowur*, or chapters, which compose the Koran, were not digested, in their present form, until after the death of Mohummud; when they were collected by his immediate successor Aboo Bukr; and were afterwards, in the 30th year of the Hijrah, transcribed, collated, and promulgated, by order of the Khuleefah Othman.<sup>1</sup>

Foundation of the Mohummudan law, religious, civil, and criminal.

The Koran being thus considered the written word of God, its texts, when clear and applicable, and not abrogated by other texts of subsequent revelation, are unquestionable and decisive. But, (as remarked by an eminent historian<sup>2</sup>) "In all religions the life of the founder supplies the silence of

Ordnances of the Koran, or written law, in what cases decisive.

<sup>1</sup> V. Sale's Preliminary Discourse, Section iii.

<sup>2</sup> In chap. i. of the *Decline and Fall of the Roman Empire*, relative to Arabia.

Its imperfections supplied by the *Soonmut*, or traditional law.

Authority of the traditions which compose the *Soonmut*.

written revelation : the sayings of Mahomet were so many lessons of truth ; his actions so many examples of virtue ; and the public and private memorials were preserved by his wives and companions." In fact, the ordinances of the Koran, in civil affairs, are few and imperfect ; and must have proved altogether inadequate to provide for the various objects of legislation, in a large and civilized community, without the aid of the *Soonmut* ; or rule of conduct, deduced from the oral precepts, actions, and decisions, of the prophet. These were not committed to writing by Mohummud ; but were collected after his death, by tradition, from his companions, (the *Sahabah* ; ) their contemporaries, (*Tabi'een*, literally, followers ; ) and successors (*Tuba-i-tabi'een* ; ) and the authentic traditions, which have been preserved in numerous compilations of *Ahadees*, (*dicta, factaque* ; precepts and transactions) ; *Soonun*, (*instituta vitæ, exempla* ; rules of practice and examples) ; or *Riwayat*, (*relationes*, reports ; ) constitute a second authority of Mosulman law ; conclusive (if the authenticity and application of the traditions be admitted) in all cases not expressly determined by the words of the Koran.\*

\* The collections of traditions held in the most general estimation, as genuine and authoritative, by the Soonees, or orthodox traditionists, are the following ; denominated *Sihah-i-sittah*, or the six authentic.

1. *Saheeh-i Bokharee*. Compiled by Abou Abdoollah, Mohummud, of Bokhara. He was born A. H. 194 ; and died in the year 256 ; in the suburbs of Sumurkund. His compilation is said to contain above seven thousand traditions ; selected from 300,000.

2. *Saheeh-i Mooslim*. By Abou'l Hosen, Mooslim, of Nyshapoor. He died A. H. 261 ; and is also said to have compiled his work from 300,000 traditions. This and the preceding collection, when cited together, are called *Saheehyn*, or the two authentic.

3. *Soonun-i-Ibn-i Majah*. By Mohummud-bin-i yuzeed, bin-i Majah ; of Kuzveen. (Erroneously named Ben Mohummud, in D'Herbelot.) Title *Sonan Ebn Majah*. He died at Kuzveen, in Irak, A. H. 278.

4. *Soonun-i Abou Daood*. By Abou Daood, Solyman, of Sijistan. He was born A. H. 202 ; and died at Busrah, in the year 275. His work is stated to consist of 4,800 traditions, selected from 500,000.

5. *Jama-i Tirmizee*. By Abou Ieesa, Mohummud, of Tirmiz, in Toorkistan. He is also surnamed Zureer or Dhureer, from his blindness. His birth was A. H. 209 ; and his death in 279. His compilation is noticed by D'Herbelot, under the title of *Giame al Kebir* ; and is erroneously cited (apparently from D'Herbelot) in Hamilton's Preliminary Discourse, page 36, as 'quoted in the *Hidayah* ; instead of the *Jama-i Kubeer*, on *fik-h*, or jurisprudence, by Imam Mohummud.

6. *Jama-i Nisa'ee* ; called also *Soonun-i Nisa'ee*. By Abou-i abd-oo, Rahman Ahmud, of Nisa, a city of Khorasan. He was born A. H. 215 ; and died in the year 303. This collection is selected from a former compilation, by the same author, called the *Soonun-i-koobra*, and mentioned by D'Herbelot, under the title of *Sonan Al Kebir*.

The four works last mentioned, when cited collectively, have the designation of *Soonun-i urba*, or the four collects of traditions. The short notices, which have been given, of their compilers, and of the authors of the *Saheehyn*, are taken chiefly from the *Mirat-ool-aalam*, an esteemed general history composed by Bukht-yar Khan, in the reign of Aurungzeb. They are confirmed, with many other particulars, in the *Mishkat*, a work of authority on the traditions admitted by the Soonees, and used, as a class book, in Mosulman colleges, with the *Saheeh-i Bokharee*, and *Saheeh-i Mooslim*. The author, Shykh Waleeoodeen, Abou Abdoollah, Mahmood, who finished his undertaking (to verify and illustrate the traditions contained in a former compilation, called the *Musabeehoo'soonmut*, by Hosen bin-i Musooood, Fura'ee) A. H. 737, states that the *Mowutta* of Malik bin Ans, (the founder of the second orthodox sect, who died A. H. 179) is, by some reckoned one of the six authentic collections, instead of the *Soonun-i Ibn-i Majah*. He adds that others are of opinion, the *Darumee*, compiled by Abou Mohummud Abdoollah of Sumurkund, surnamed Darumee, who was born A. H. 181, and died in 255, should be classed as the sixth authentic. But he has himself given

The schisms and dissensions, however, which took place among the Mohummudans, after the demise of their legislator and founder, especially the contest for the succession to the *Khilāful*, or pontificate, which gave rise to the *Shi'ah*, or sectaries of Alee, have occasioned various differences and disagreements, both in reading and interpreting the word of the Koran, and in admitting or rejecting the traditions, which compose the oral law. There appears to be an error, or verbal inaccuracy, in the observation of the learned, and in general accurate, translator of the Koran, that "the *Sonnites* receive the *Sonna*, or book of traditions of their prophet, as of canonical authority; whereas the *Shi'ites* reject it "as apocryphal, and unworthy of credit."<sup>1</sup> From this remark it might be inferred, that the *Shi'ah* reject the traditions altogether; whereas they admit many which are not deemed authentic, and are consequently rejected, by the *Soonies*. They have also their collections of *Ahādees*, and *Soonun*, which they deem genuine and authoritative.<sup>2</sup> The difference between them, and the *Ahli-Soonnut*, or orthodox traditionists, who, as remarked by Mr. Hamilton, appear to have assumed this title of distinction, "in opposition to the innovations of the sectaries,"<sup>3</sup> lies, as far as respects the traditions, in the different authorities, which are admitted by the two sects for the *Ahādees*, received by them respectively. The *Soonies* allow traditionary credit to the *Sahābah*, or companions of their prophet; especially to the most eminent amongst them, or those who had the longest and most familiar intercourse with Mohummud; and to the *Khoofā-i rāshideen*, or the four *Khuleefahs*, who were the immediate successors of the prophet; and instructed by him in the principles and tenets of his religion. Also to several intelligent and learned men, who were contemporary with the companions and first *Khuleefahs*, and who are included in the general description of *Tābi-teen* already mentioned; as well as to others, who succeeded these; (the *Tābi-teen*;) and have verified their reports of traditions, by citing the names of the persons, through whom they were successively traced to their genuine source, the apostle supposed to have been divinely inspired.<sup>4</sup>

Different readings and interpretations of the Koran, as well as difference in admitting the traditions, from religious schisms. Traditions admitted by the sectaries of Alee.

Difference between the *Soonies* and *Shi'ah*, in admission of traditions. Authorities admitted by the *Soonies*.

this place to the compilation of Mohummud, the grandson of Majah; and it is commonly placed third in the series, with reference to the supposed order of publication.

<sup>1</sup> Sale's Preliminary Discourse, Section viii.

<sup>2</sup> Mohlavee Sirāj oo'deen Alee (one of the law officers of the courts of *Sudder Deewany* and *Nizamut Adawlut*, as well as of the supreme court, and employed by the late Sir W. Jones, to compile the *Sheekh* part of a digest of Mosulman law, upon contracts and inheritance) states the *Kootob-i urbā*; or four books of traditions, held authentic by the *Shi'ah*, to be the following:

1. *Tahzeeb*. 2. *Istibsr*. Both compiled by Aboo Jāfur Mohummud, of Toos, in Khorasān.

3. *Jāmā-i Kāfee*. By Mohummud bin-i Yākoob. Of Ry, in Persian Irak.

4. *Mun lā Yahzoorh ool-fukech*. By Mohummud bin Alee, of Komm, also in Irak i Ajum.

The third of these collections, which quotes the compiler of the two first, is said to have been presented to Imām Mahdee, who was born A. H. 255. The author of the fourth compilation is stated in the *Mujālis ool-Momuneen*, to have been contemporary with, and protected by, the Persian King Rokn-oo'doulah, who died A. H. 366.

<sup>3</sup> Preliminary Discourse to his translation of the *Hidayah*, page 22. His observation, at length, is "The Mussulmans, who assume to themselves the distinction of orthodox, are such as maintain the most obvious interpretation of the Koran, and the obligatory force of the traditions, in opposition to the innovations of the sectaries; whence they are termed *Soonies*, or traditionists." This, however, is partly open to the same objection, as has been stated to the remark of Mr. Sale.

The nature of this treatise does not admit of a fuller account of the *Soonie* traditions; which are distinguished by some authors as *Saheeh* (authenticated); *Husun* (approved); *Zaitef-o-ghureeb* (weak and poor); *Moonkur-o-mousooa* (denied and



Authorities of  
the *Shi'ah*.

The *Shi'ah*, on the contrary, give no authority, or credit, to the three first *Khuleefahs*, Abou Bukr, Omur and Othman; nor to any other companions of Mohummud, excepting such as were partisans of Alee. They extend their faith and obedience, however, to the admission of all traditions of their prophet's sayings and actions, which they believe to have been verified by any one of the twelve *Imams*; from whom they take their denomination of *Imameeyah*; as well as to the precepts and examples of those *Imams* themselves; the whole of whom they venerate, as being the lineal descendants (through Fatimah) and, according to their tenets, the rightful successors of Mohummud; and the last of whom they believe to be still living, though invisible; it having been predicted of him, that he will return to judge, and rule the world; to punish sinners, and those who have departed from the true faith; and to restore and confirm the genuine truths of religion, with piety, justice, and every other virtue.'

Further legal  
authorities re-  
ceived by the  
*Soonies*, in cases  
not provided  
for by the Ko-  
ran and *Soon-  
nud*.

When neither the written nor oral law prescribes a rule of decision, the concurrence of the companions of Mohummud (*Ijma'â-i Sahâbah*) is received by the *Soonies*, as a third source of legal authority: and if this also fail, they allow the validity of reason, restricted by analogy, (*Kiyâs*,) in applying, by inference, the general principles of law and justice, to the various transactions and circumstances of the changeful scene of human life; which, as they could not be all foreseen, it was impossible they should be completely and expressly provided for. This is so clearly stated, with the origin of the principal *Soonie* sects, who agree in matters of faith, (*âkâ'eed*), but differ on points of practical jurisprudence, (*fi'k-h*,) in a section of the *Mokhtusur oo dowul* (compendium of dynasties) of Gregorius Abou'l Furuj, translated (into Latin) by Pocock, in his *Specimen Historiæ Arabum*; that the following English version will not, it is presumed, be unacceptable; especially as both the Arabic original and Latin translation are little known in India.\*

imposed): by others, as *Moosnud* (vouched or certified); and *Moorsul*, or *Moonkutû* (detached or divided). The *Moosnud* are also subdivided as *Murfoo'â* (ascending to the prophet); *Moukoof* (resting with the *Sahâbah*); and *Muktoô'â* (severed or cut short among the *Tabi'een*); or by another classification as *Mootawâtur* (repeated, successive); *Mush'hoor* (public, notorious); and *Wâhid* (single, particular). The *Mishkât*, referred to in a former note, has however been translated from the original Arabic by an officer of the Bengal Artillery, Captain A. N. Matthews, and has been published by him since the first edition of this volume was printed.

\* The names of the twelve *Imams* are given by D'Herbelot, under the head of *Imâm*. He has also given a brief statement of the tenets of the *Shi'ah*, under the titles of *Schiah*, *Alî*, and other titles of his valuable, though (as might be expected in so voluminous and miscellaneous a work) sometimes erroneous and often imperfect compilation. A fuller account of the doctrines and practice of the *Shi'ah* is contained in the 2d vol. of Chardin. (*Description de la Religion des Persans*, in the Amsterdam edition of his *Voyages en Perse*, published in 1711.) But the most authentic information upon the jurisprudence of the *Imameeyah* sect, (which, not having been established, for the administration of justice, in any part of the Company's territories, needs not to be further noticed in this tract,) would be furnished by the completion of a work, the first volume of which has been printed, and is entitled—"A Digest of Mohummudan Law, according to the tenets of the Twelve *Imams*; compiled under the superintendence of the late Sir William Jones: extended, so as to comprise the whole of the *Imameea* code of jurisprudence, in temporal matters; and translated from the original Arabic, by order of the supreme Government of Bengal; with notes, illustrative of the decisions of other sects of Mohummudan lawyers, on many leading and important questions. By Captain John Bailie, Professor of the Arabic and Persian languages, and of Mohummudan law, in the college of Fort William."

\* Abou'l Furuj was a Christian, born at Malathia in Aladulia, or Armenia minor, A. C. 1226. But he wrote in Arabic, and appears to have been well versed in the

"Of the sects (*Muzáhib*) which differ upon the branches, or derivative parts of the law, concerning rules of jurisprudence, and cases of disquisition, four are the most celebrated: viz. those of Málik bin-i Ans; of Mohummud bin-i Idrees, oo'Sháfí, jee; of Ahmud bin-i Hunbul; and of Aboo Huneefah Naomán bin-i Thábit. The fundamental grounds of disquisition (*Ijtihád*) are also four; the scripture (*Kitáb*); the traditional law (*Soonnut*); the concurrence of the prophet's companions (*Ijmá'á*); and analogy, or analogical reasoning (*Kiyás*). For, when any legal question arose, respecting what was lawful or unlawful, a regular investigation took place, in the following manner. First, they searched the book of Almighty God (the Koran); and if any clear text were found in it, such was adhered to. But, if not, they sought for a precept, or example, of the prophet; and abided by it, if applicable, as decisive. If none such were discovered, they inquired for a concurrent opinion of the *Sahábah*; who, being directed in the right way, are not open to suspicion of misleading; and therefore, if their sentiments could be ascertained, on the point in question, they were deemed conclusive. If not, an ultimate resort was had to analogy and reason; the variety of contingent events being infinite; whereas the texts of the law are finite. It thus appears certain that the exercise of reason may be proper and necessary in legal disquisition. Imám Dá'ood of Isfahán, however, entirely rejected the exercise of reason; whilst, on the contrary, Aboo Huneefah was so much inclined to it, that he frequently preferred it, in manifest cases, to traditions of single authority. But Málik, Sháfí, jee, and Ibn-i Hunbul, had seldom recourse to analogical argument, whether manifest or recondite, when they could apply either a positive rule, or a tradition. This gave rise to their different opinions and judgment; which are recorded in books that treat of their disputations; yet neither infidelity, or error, is to be charged against them on this account."

Origin of the principal Souni sects, as stated by Aboo'l Hunj

The four principal jurists, and founders of sects, among the *Soonies*, who are noticed by Aboo'l Furuj, have been particularly mentioned in the notes of Pocock's specimen, already referred to; in the *Bibliothèque* of D'Herbelot; and in the preliminary discourses of Sale and Hamilton. The doctrines

Which of the four principal sects prevail in India

religion and law, as well as in the history, of Arabia. V. Pocock's *Specimen Historiæ Arabum*, comprising an extract from the dynasties of Aboo'l Furuj, which, Gibbon observes, "form a classic and original work on the Arabian antiquities." Published at Oxford, in 1650. Also the complete Latin version of the original work, by Pocock, published in 1663. Gibbon has added upon this, however, that "it is more useful for the literary than the civil history of the East." Cap. li. n. 13.

<sup>1</sup> Their names, at length, are — 1. Aboo Huneefah Naomán bin-i Thábit; or, as pronounced in India, Sábit. 2. Aboo Abdoollah Málik bin-i Ans, or, as otherwise read, Anus. 3. Aboo Abdoollah Mohummud ibn-i-Idrees oo'Sháfí, jee, or a descendant from Shafí, j. 4. Aboo Abdoollah Ahmud ibn-i Hunbul. The first is commonly called Aboo Huneefah, meaning the father of Huneefah, and therefore is improperly cited, in the translation of the *Hidayah*, by the name of Huneefah only; which, moreover is a feminine appellation, and was the name of the second wife of Aleé. (Vide Tit. Hanifah, in the Bib. of D'Herbelot.) He was born at Koofah, about A. H. 80; (some say ten, and others twenty-one, years earlier;) was instructed in the traditions, by Imám Jáfur-i Sádk, the sixth Imám; who, as an authority for the precepts and actions of Mohummud, is esteemed by the *Soonies*, as well as by the *Shi'á*; (not the *Sheeah* doctor, Aboo Jáfur, mentioned in a former note; as erroneously stated in Hamilton's Preliminary Discourse, p. xxiii. Vid. Tit. *Giáfar*, in the *Bib. Or.*) and died in prison, at Bughdad, in the *Khiláfat* of Munsoor, A. H. 150. The founder of the second sect is known by his proper name Málik. He was born at Mudeenah, between the years 90 and 95 of the *Hijrah*; and died at the same place, in a state of religious retirement, during the reign of Hároon oo'Rusheed, A. H. 179. The patronymic, *Sháfí, jee*, usually distinguishes the third leader; who was born at Gaza or Ascalon, in

of Málík, and Ibn-i Hunbul, are not known to prevail in any part of India. Those of Sháfíjee have a limited prevalence on the sea coast of the peninsula; and are understood to obtain among the Malays, and other Mosulman inhabitants of the Eastern Islands. But the authority of Aboo Huneefah, and his two disciples, Aboo Yoosuf, and Imam Mohommud, is paramount, and exclusively governs judicial decisions, in Bengal and Hindoostan, as well as at Constantinople, and other seats of Mohummudan dominion in Turkey and Tartary. It will therefore be sufficient to state the system of Aboo Huneefah, with the illustrations and amendments of Aboo Yoosuf and Imám Mohommud; 'noticing, after the manner of the *Hidáyah*, any particular opinions of the other orthodox sects, upon points of importance, which may appear to require it.

Rule of decision when there is a dif-

It has been remarked by Sir W. Jones, in his preface to the *Sirájeeyah*,<sup>a</sup>

Palestine; in the hundred and fiftieth year of the *Hijrah*; and died at Cairo, (where the famous Saláh oo deen, some centuries afterwards, founded a college, in honor of his memory and doctrines,) A. H. 204. The last chief, Ahmud, is more generally called, from his father, Ibn-i Hunbul. He was born at Bughdad, or according to some at Murv, or Muroo, in Khorasan, A. H. 164; and died at Bughdad, where he attended the lecture of Sháfíjee, A. H. 241.

<sup>a</sup> Aboo Yoosuf Yákoob bin-i Ibraheem ool Koofee, was born at Koofah, A. H. 113; and after finishing his studies under Aboo Huneefah, was appointed Kázee of Bughdad by the Khuleefah, Hádee. He was afterwards, in the reign of Hároon oo' Rusheed, made Kázee ool Koozá, or chief judge; and retained that high station, (which is said to have been first instituted for him) until his death A. H. 182.—Aboo Abdoolah Mohommud bin-i Husun oo' Shybánée, (of the tribe of Shybán) who is usually called Imám Mohommud, was born at Wásit, in Arabian Irak, A. H. 132. He was a fellow pupil with Aboo Yoosuf, under Aboo Huneefah, and on the death of the latter, continued his studies under the former. He is also said to have received instruction from Málík. He was appointed by Hároon oo' Rusheed to administer justice in Irák-i ajum or Persian Irák; and died at Ry, the former capital of that province, A. H. 179; or, according to the Rouzut oo'riyáheen, an esteemed history from the commencement to the 759th year of the *Hijrah*, by Yáfíjee, A. H. 189. (See further particulars respecting Aboo Yoosuf and Imám Mohommud, in Hamilton's Preliminary Discourse.) Zoofur bin-i Hoozel, and Husun bin-i Ziyád, (the former of whom held the appointment of chief magistrate at Busrah, where he died A. H. 158) were also two distinguished contemporaries, and scholars, of Aboo Huneefah; and are sometimes quoted as authorities for his doctrines; especially when the two principal disciples are silent.

<sup>a</sup> A work of authority upon the Mohummudan law of inheritance, translated and published, with a commentary, by Sir W. Jones, in the year 1792. This is the only part of the Mosulman Digest, undertaken by the venerable judge in 1788, which his various avocations and studies allowed him to complete. He deemed it worthy of being exhibited entire, as containing the "Institutes of Arabian law on the important title mentioned by the British legislature (in the Statute 21, George III. Chapter lxx.) of inheritance and succession to lands, rents, and goods." And it is of particular value, to the jurisprudence of British India, as the *Hidáyah*, translated by Mr. Hamilton, does not include the law of inheritance. It has not been ascertained when the author of the original treatise lived. But the Kushf-oo' Zunoon, (or dhunoon, as pronounced in Arabia) the bibliographical work of Hajee Khulfah, which furnished materials for a considerable part of the Bibliothèque Orientale, (Vid. Galand's preface, p. xiv. Ed. 1776.) mentions it, under the title of *Furáyid oo' Sujáwundee* in the following terms; together with the date of the commentary of Syyud Shureef; the substance of which is given by Sir W. Jones, with that of a recent Persian comment, by Moulavee Mohommud Kásim, who was employed by Mr. Hastings to translate, from the Arabic into Persian, both the *Sirajee yah* and the *Shuree feeyah*. "The *Furáyid-oo' Sujáwundee*, (composed by Imám Sirájoo'deen, Mahmood bin-i Abdoo' Rusheed, of Sujáwund, is commonly called the *Furá eez-i Sirájee yah*. It is held in high estimation and in general use. Many of the learned have written commentaries upon it, to the number of forty; the best of which is the comment of Syyud oo' Shureef Aleeb bin-i Mohommud, of Joorjan; finished at Sumurkund, in the year (of

“that although Abou Haneefah be the acknowledged head of the prevailing sect, and has given his name to it, yet so great veneration is shown to Abou Yoosuf, and the lawyer Mohummud, that, when they both dissent from their master, the Mosulman judge is at liberty to adopt either of the two decisions, which may seem to him the more consonant to reason and founded on the better authority.” This remark corresponds with the received opinion of present lawyers; and is sanctioned, for the most part, by a passage to the following effect in the *Hummádeeyah*.<sup>1</sup> “*Futwás* (law decisions, or opinions) are given primarily, according to the doctrine of Abou Huneefah; next according to Abou Yoosuf; next according to Imam Mohummud; next according to Zoofur; and then according to Husun bin-i Ziyád. It is said, that if Abou Huneefah be of one opinion, and his two disciples of another, the Mooftee is at liberty to choose either: but the preceding rule must be observed, when the Mooftee is not a scientific jurist; (and therefore not competent to judge of the opposite opinions). This is copied from the *Koonyah*.<sup>2</sup> In judicial decrees however a preference is given to the doctrine of Abou Yoosuf (who was an eminent judge); for Imam Surukhsee,<sup>3</sup> has declared it safe to rely upon Abou Yoosuf in judicial matters; and that the learned have followed him in such cases; though if there be a difference between the two disciples, whichever agrees with Abou Huneefah must be preferred. The joint opinion of the disciples may also be adopted, though different from that of Abou Huneefah, if the difference appear to proceed from a change of human affairs; (*lit.* a change of men, and alteration of times;) and modern lawyers are agreed, that the doctrine of the two disciples may be taken for adjudication in all matters of civil justice.”

ference of opinion between Abou Huneefah, and his two disciples, Abou Yoosuf and Imam Mohummud.

It appears, however, that the ancient jurists held the authority of Abou Huneefah to be absolute, although both his disciples might differ from him. This is stated, without reservation, in a chapter “on the order of authorities to be observed in practice,” forming part of the book entitled *Adáb ool Kázee*, or *duties of the Kázee*, in the *Futáwa-i Aalumgeeree*, or collection of law cases, compiled by order of the Emperor Aalumgeer. The same chapter contains other useful information upon the rules and discretion, under which the Mosulman magistrate is empowered to administer justice; and as it is not long, a literal translation of it is here introduced; omitting only a quotation from the *Mubsoot*, which being nearly a repetition of that given from the *Budayí*, the insertion of both appeared superfluous.

Authority of Abou Huneefah formerly held absolute, although both his disciples might differ from him.

“It is incumbent upon a *Kázee* (or judge) to give judgment according to the book of God; to know what parts of the divine book are in force, and what have been abrogated; to be able to distinguish between the texts which

Chapter of the Futawa-i Aalumgeeree, “on the order of authorities to be observed in practice”

the Hijrah) 804. This commentary is of the first authority, and universally received. Several Scholiasts, of erudition, have given annotations upon it.”

<sup>1</sup> A collection of legal expositions, by Aboul futha, Rokn oo deen ibn-i Hosám, Mooftee of Nágor, in the Dukhun; and dedicated to his teacher, Humád oo’ deen, Ahmud, chief Kázee of Nuhr wálah. The time when this work was compiled is not exactly known; but, though of modern date, it is held in considerable estimation. The court of nizamat adawlut possess a complete copy, obtained for them, with some other law books, by Lord Teignmouth, from the Newab Vizeer, in the year 1797.

<sup>2</sup> A law tract often quoted in the *Futáwa-i Aalumgeeree*, not known to be at present extant; and by whom composed, has not been ascertained.

<sup>3</sup> Shums ool Aimmah, Abou Bukr Mohummud, native of Surukhs, in Khorasan. The *Moheet*, composed by him, will be mentioned in a subsequent note. He also wrote a commentary on the *Jámá i Sugheer* of Imám Mohummud; and a comment upon the *Káfee ool Hákim*, (stated in the *Kushf-oo’-zunoon* to have been composed by Hákim-i Shaheed, Mohummud; but no longer extant,) which is called *Mubsoot-i Surukhsee*, and often quoted in the *Hidáyah*. He died at the place of his nativity, A. H. 483.

are clear and positive; and such as are of doubtful meaning, having obtained a different interpretation from the learned. If no rule be found in the book of God, the *Kāzee* is to decide according to the traditions from the prophet. He must therefore be competent to discriminate those in force from such as have been superseded; and the spurious and invalid, from such as are genuine and authoritative. He must be acquainted with those which have obtained successive, notorious, or single, verification; and with the character and credit of the reporters of them. Because some are celebrated for their knowledge of jurisprudence (*fik-h o ādihut*); as the four first *Khuleefahs*, and the three *Abdoollahs*, (viz. *Abdoollah ibn-i Omur*, *Abdoollah ibn-i Abbās*, and *Abdoollah ibn-i Musoood*, three of the most learned of the companions); whilst others are esteemed on account of their long and familiar intercourse with the prophet, and their perfect recollection of the traditions; and they are preferred accordingly; the former as the best authorities on the general principles of legal science; the latter for the authenticity of particular traditions. If a case arise to which none of the traditions, derived from the Prophet, may be applicable, let the *Kāzee* determine it according to the concurrent opinion of the *Sahābah* (companions), for their concurrence affords a just and obligatory rule of conduct. If there be a difference of opinion among the companions, let the *Kāzee* compare their respective arguments, and follow those which, on investigation, may appear to him preferable; supposing him qualified to enter into such a disquisition. He is not authorized to reject the whole of these opinions, and adopt a judgment of his own, altogether novel. For the companions have agreed upon this point, that although they may differ from each other, it is not lawful to institute new doctrines, at variance with the whole of them. *Khusāf*<sup>1</sup> holds the contrary opinion, that when the companions differ, the *Kāzee* may adopt a judgment altogether distinct, as their dissension affords ground for disquisition: but what is above stated has the best foundation. When the companions have agreed upon a point, in which one of their followers (*ṭābiieen*) has dissented from them; if the dissenter was not their contemporary, his opposition has no weight; and a judgment given conformably thereto, against the concurrent opinion of the companions, would be invalid: but if he were contemporary with them, and then expounded the law in opposition to their opinions, and they gave sanction to his disquisitions, as in the instances of *Shoryh* and *Shābee*,<sup>2</sup> the concurrence of the companions does not bar the opposite exposition, so admitted. With respect, however, to expositions which have no other authority than part of the *Ṭābiieen*, there are two reports of the sentiments of *Aboo Hunee-fah*. One, that he did not consider such to be authoritative: and this appears to be the true doctrine. The other, contained in the *Nuwādir*,<sup>3</sup> states,

<sup>1</sup> Imam *Aboo Bukr*, *Ahmud bin-i Omur*, surnamed *Khusāf*, or the farrier. He composed the most celebrated of the works known under the title of *Ādāb ool Kāzee* or duties of the *Kāzee*; and is stated, in the *Kushf oo Zunoon*, to have died A. H. 261. A high encomium is added upon his composition; which is said to consist of 120 chapters, replete with useful information. Several learned men have written commentaries upon it, of which the most esteemed is that of *Imām Omur bin-i ābdool-āzeez*, commonly called *Hoosām*, the martyr, killed A. H. 536.

<sup>2</sup> The first was *Kāzee*, the second *Mooftee*, of *Koofah*, in the first century of the *Hijrah*; and they were esteemed two of the most learned men of their age. The former, whose name at length, is *Aboo Omyyah Shoryh bin ool Hirās ool Kindee*, held the station of *Kāzee*, at *Koofah*, for seventy-five years, and died A. H. 78 or 80; after resigning his office the year before his death. The entire name of the latter is *Aboo Omur Aāmīr bin-i Shurāheel oo Shābee*, deriving his surname from the town of *Shāb*, in Arabia. He died A. H. 104.

<sup>3</sup> Ten different works of this name, (meaning literally, rare, or scarce) are specified in the *Kushf oo Zunoon*; of which one was composed by *Imām Mohummud*, the

that if some of the followers of the companions have given *Futwās* in their time, and have received from the latter a sanction to their disquisitions; as Shoryh, Husun,<sup>1</sup> and Musrook bin-i Ajdā,<sup>2</sup> their decisions should be observed. It is thus written in the *Moheet*:—<sup>3</sup>

“If the concurrent opinion of the companions be not found in any case, which their followers may have agreed upon, the *Kāzee* must be guided by the latter. Should there be a difference in opinion between the followers, let the *Kāzee* compare their arguments and adopt the judgment he deems preferable. If, however, none of the authorities referred to be forthcoming, and the *Kāzee* be a qualified jurist; (*Ahil ool-Ijtihād*, literally, a person capable of disquisition;) he may consider in his own mind what is consonant to the principles of right and justice; and applying the result, with a pure intention, to the facts and circumstances of the case, let him pass judgment accordingly. But if he be not a qualified person, let him take a legal opinion from others who are versed in the law, and decide in conformity thereto. He should, in no case, give judgment without knowledge of the law; and should never be ashamed to ask questions for information and advice. It is further requisite that the *Kāzee* attend to two rules: first, that when the three *Imāms* (Aboo Huneefah, Aboo Yoosuf, and *Imām* Mohummud) all agree, he is not at liberty to deviate from their joint opinion, upon his own judgment. Secondly, when the three *Imāms* differ, Abdoollah-ibn-i Mobārūk<sup>4</sup> says, the *Kāzee*'s sentence is to be given according to the opinion of Aboo Huneefah, because he was one of the immediate followers and contemporaries of the companions, and opposed them in his *fatwās*. So it is in the *Moheet* of Surukhsee.<sup>5</sup>

“If no precedent be found from Aboo Huneefah and his disciples, and the case have been determined by subsequent lawyers, the *Kāzee* is to abide by the judgment of the latter; unless there be a difference in their decisions, in which event the preference is left to his discretion. If not even a modern

disciple of Aboo Huneefah; and is probably that here referred to. It is considered to be of less authority than his five other works, the *Jāmā-i sugheer*, *Jāmā-i kubeer*, *Mub-soot*, *Zeeādāt*, and *Siyur*, which are well known, and frequently quoted, under the general designation of *Zāhir oo' Ruwāyāt*, the conspicuous reports.

<sup>1</sup> Vid. Bib. Or. Tit. *Hassan al Basri*.

<sup>2</sup> A learned native of Humadan, who became a convert to Islam, during the life of Mohummud; and died at Koofah, A. H. 62.

<sup>3</sup> There are three works of this title; all of which are quoted in the *Futawā-i Aalumgeeree*; but the two others are distinguished by the addition of *Surukhsee* or *Boorhānee*. The two latter will be mentioned in a subsequent note. The *Moheet*, here referred to, is supposed to have been written by Moulānā Ruzee oo' deen of Nysha-poor, who, in the notes prefixed by Syud Ahmud-i Humāvee to an old copy of the *Hidāyah*, purchased at Mukkah, is said to have compiled the opinions of the followers of Aboo Huneefah, in a regular series; whereas other compilers had blended them. This *Moheet*, however, is not extant in India, and is only known by quotations from it.

<sup>4</sup> One of the pupils of Aboo Huneefah, surnamed Muroozee from Muroo, the place of his nativity. He was held in high veneration for his piety, and his tomb is said to be visited, at Hit, in Arabian Irak. (Vid. Bib. Or. Tit. *Abdalla*). He died at the age of 63, A. H. 181. (*Mirāt ool Aalum*).

<sup>5</sup> The author of this work, which is extant, and held in high estimation, is stated, in the *Kushf oo' Zunoon*, to be Shums ool aimmah, Aboo Bukr Mohummud, of Surukhs, mentioned in a former note. The *Moheet-i Boorhānee*, composed by Boorhān oo' deen, Mahmood bin-i Ahmud, is also noticed in the *Kushf oo' Zunoon*; but without any particulars of the author. He is mentioned by D'Herbelot, under the title of *Sarakhsi*, as having been born at Surukhs; and having gone from thence into Syria, where he superintended a college at Aleppo, and died at Damascus, A. H. 571. His *Moheet* is known in India; and an incomplete copy is possessed by the court of nizamat adawlut; but it is less esteemed than that of Shums ool Aimmah.

precedent be forth-coming, the *Kázee* may exercise his own reason and judgment; provided he be conversant with jurisprudence, and have consulted with sages of the law. In the commentary of Tahávee, <sup>1</sup> it is stated, that if the *Kázee* pass sentence on his own judgment, in opposition to the manifest letter of the law (*Nuss*), such sentence is not valid. But if the sentence be not contrary to the clear letter of the law, and the *Kázee*, after passing it, should change his opinion, his former judgment is, nevertheless, valid: though his future adjudications must be regulated by his recent opinion. This is the doctrine of the two elders (Shykyn, viz. Abou Huneefah and Abou Yoosuf,) and Imám Mohummud agrees with them, provided the second opinion of the *Kázee*, in such cases, be deemed by others preferable to the first. It is further stated (by Tahávee), that if the ancient jurists have formed different opinions upon any point, and their successors have agreed upon the opinion to be preferred; according to the two elders, this agreement does not remove the effect of the former difference; but Imám Mohummud thinks it is removed thereby. Shykh ool Islam Shums ool aimmah Surukhsee, reports, however, that all the disciples of Abou Huneefah agree in opinion upon this point, and that a few of the learned only hold the continuance of the original dissent, notwithstanding the subsequent agreement. If the lawyers of one age concur in any particular doctrine, and a *Kázee*, in after times, differing in opinion from them, with an upright intention, pass an opposite judgment; some hold his so doing to be legal, provided there were an original difference among the learned upon the doctrine in question; whilst others deem it illegal, notwithstanding such original difference; but all agree upon the illegality of the opposite judgment, supposing no difference of opinion to have been at any time entertained upon the subject. In the *Futáwá-i Itabiyah*: <sup>2</sup> it is stated, that if a *Kázee* take an exposition of the law from a *Mooftee*, and differ in opinion from the latter, he is to pass sentence in the case according to his own judgment; provided he be a person of understanding and knowledge; and that if the sentence be passed against his own opinion, in deference to that of the *Mooftee*, it is according to the two disciples (Sahibyn, viz. Abou Yoosuf and Imám Mohummud) invalid: in like manner, as in matters of religious preference on presumption it is forbidden to act upon the judgment of others: but Abou Huneefah holds the sentence to be valid in such cases, as it is the result of legal disquisition. Supposing the *Kázee* not to have exercised his own reason on the case, at the time of his giving judgment according to the opinion of the *Mooftee*; and that he subsequently forms an opinion, at variance with that of the *Mooftee*, Imám Mohummud says, his sentence is liable to abrogation; but Abou Yoosuf affirms, it is not affected thereby; in the same manner as it would not be affected if the *Kázee* had passed sentence on his own opinion, and had afterwards changed that opinion. The foregoing is copied from the *Tatarkhá-neeyah*.<sup>3</sup>

“When there is neither written law, or concurrence of opinions, for the

<sup>1</sup> Imám Abou Jafur Ahmud bin-i Mohummud, of Taha (a town in upper Egypt) is one among the numerous commentators of the *Jámâ-i Sugheer* of Imám Mohummud. He also wrote an abridgment of the doctrines of Abou Huneefah, and his two disciples, intitled *Mokhtusur-i Tahávee*. Both works are often quoted as authorities, but are not known to be now extant. He is stated in the *Kushf oo Zunoon*, to have died A. H. 371.

<sup>2</sup> The author of this work, Abou Nusr Ahmud bin-i Mohummud ool Itábee, of Bokhára, is mentioned in the *Kushf oo Zunoon* as having also written a commentary on the *Jámâ-i Sugheer* of Imám Mohummud. He died A. H. 586.

<sup>3</sup> Vid. Bib. Or. Tit. *Tatarkhan*. An imperfect copy of the work referred to, entitled *Futáwá-i-Tatarkhá-neeyah*, is in the possession of the court of nizamat adawlut.

guidance of the *Kázee*, if he be capable of legal disquisition, and have formed a decisive judgment on the case, he should carry such judgment into effect by his sentence, although other scientific lawyers may differ in opinion from him; and should not be governed by their sentiments, in opposition to his own: for that which, upon deliberate investigation, appears to be right and just, is accepted as such in the sight of God. If however the persons, who declare an opinion different from that of the *Kázee*, be superior to him in science, and he consequently adopt their judgment, without questioning the grounds of it, from respect to their superior knowledge, Aboo Huneefah admits the legality of his proceeding. Aboo Yoosuf and Imám Mohummud, on the contrary, do not allow it to be legal, unless he ultimately adopt their opinion as the result of his own judgment. This, at least, is one report: but another says, that the master and his two disciples held, respectively, the reverse of what has been mentioned. If, in any case, the *Kázee* be perplexed by opposite proofs, let him reflect upon the case, and determine as he shall judge right; or, for the greater certainty, let him consult other able lawyers; and if they differ, after weighing their arguments, let him decide as appears just. Should they agree with each other, but differ from his own opinion on the case, he is to adhere to the latter until he be convinced it is ill founded, and may give judgment accordingly; but not precipitately, or until he has duly weighed and examined the whole of the circumstances and evidence. Let him not fear or hesitate to act upon the result of his own judgment, after a full and deliberate examination: but let him beware of a doubtful and conjectural decision, without complete investigation, as such will not be approved in the account of his actions to God; though, from want of certain information to the contrary, it may pass as a valid sentence among men. What has been here said supposes the *Kázee* to be a *Moojtahid*, or scientific jurist, competent, from his talents and learning, to undertake legal disquisition. If he be not a person so qualified, but possesses a knowledge and full recollection of the points and cases determined by the eminent lawyers of his persuasion, let him give judgment according to the tenets of those in whom he confides; and whom he believes it right to follow. Should he not have a perfect recollection of decided law-points, let him act upon expositions of the law, by *Mooftees* of the orthodox doctrine; or if there be only one such *Mooftee* on the spot, his single exposition may be acted upon, without fear of imputed deficiency. It is thus written in the *Budáyí á.*"

"The legal meaning of *Ijtihád* is the diligent exercise of the mental faculties in search of the thing desired: and the requisite qualification of a *Moojtahid* is a discriminative knowledge of what is contained in the book of God, and in the traditions from the prophet, relative to legal rules and ordinances. (*ahkám*). It is not essential that he should also know the moral precepts and admonitions included therein. It has been likewise declared that a person, whose general rectitude exceeds his deviations from right, may lawfully practise *Ijtihád*, or disquisition. But the definition above given is accurate: as stated in the *Fofool ool Imadeeyah.*" The most correct account

<sup>1</sup> A commentary on the *Tahfut ool Eokahá*, of Shýkh ôla oo'deen Mohummud, of Sumurkund, by his pupil, Aboo Bukr, bin-i Musóood, of Káshán, in Persian Irák. The author of the *Kushf oo Zunoon* states the death of the latter to have been A. H. 587; and adds, the master was so well pleased with the comment of his scholar, that he gave in marriage to the latter his daughter Fátimah, who was also learned in the science of jurisprudence. The entire name of the commentary is *Budáyí á oo Sumáyí á fee turteeb oo Shuráyí á.* Both the text and comment are quoted as authorities; but neither is known to be now extant in India.

<sup>2</sup> By Abool futejh Mohummud bin-i Aboo Bukr, of Murgheenán. He is stated, in the *Kushf oo Zunoon*, to have composed the work quoted, A. H. 651, at the college



given of a *Moqjtahid* is, that he have a comprehensive knowledge of the divine book, with the different interpretations thereof; a full acquaintance with the traditions, their gradations, texts, and comments; a right understanding, or power of just reasoning; and experience in human affairs and usages. This is quoted from the *Káfee*.<sup>1</sup>

Notice of books of jurisprudence, esteemed by the followers of Aboo Huneefah; and which govern judicial decisions in India.

Works of Imam Mohummud; and commentaries upon them.

Having thus stated the authorities for the Mohummudan law, and the preference to be observed, or discretion allowed, when they differ; it may be proper to add a short notice of the books of jurisprudence which are esteemed by the *Huneefeeyah* sect of *Soonee* lawyers, for practical exposition of the temporal law; especially such as are extant and govern judicial decisions in India.

Aboo Huneefah himself does not appear to have left any work upon jurisprudence.<sup>2</sup> His legal doctrines were recorded and illustrated by his disciples; particularly by Imám Mohummud; whose most celebrated law-tracts, entitled the *Jamá-i-sugheer*, *Jamá-i-kubeer*, *Mubsoot*, *Zeeádát*, and *Stiyur*, have been already noticed, as collectively quoted by the title of *Záhir oo' ruwáyát*.<sup>3</sup> These works are described in the *Kushfoo' Zunoon* as being of the first authority for the opinions of Aboo Huneefah and Aboo Yoosuf,<sup>4</sup> as well as of Imám Mohummud. Various commentaries are also stated to have been written upon them during the early ages of the Mohummudan era; and several are quoted in the *Futáwá-i Aalumgeeree*, compiled in the reign of Aürungzeb.<sup>5</sup> But neither the texts, or comments, are now known to be in

founded by Imád ool-Moolk, in the suburbs of Sumrunkund. It contains forty sections, on civil transactions (*Moámulát*) only; and being left incomplete at his death, was finished by his son, Jumál oo' deen. A copy is among the books of the nizamat adawlut,<sup>6</sup> and it is considered a work of authority.

<sup>1</sup> A commentary on the *Wáfee*, and written by the same author Imám Aboo'l Burkát, Abdoollah bin-i Ahmud, commonly called Hafiz oo' deen, of Nusuf, who died A. H. 710. He also wrote the *Kunz oo' Dukáyk*, a work of high authority, and extant in India; but eclipsed by its comment the *Buhr-i-Ráyk*, composed in the tenth century of the *Hijrah*, by Zyn ool Aabideen Ibn-i Nujeem, of Egypt. (Vid. Tit. *Nagim* of D'Herbelot, who appears however to have stated the year of his death A. H. 670, instead of 970; which is mentioned more than once in the *Kushf oo' Zunoon*.)

<sup>2</sup> Mr. Hamilton mentions three treatises, on theological subjects, as written by Aboo Huneefah: viz. the *Másnad*, *Filk-al-elm*, and *Moallim*. Of these the *Moosnud* is described in the *Kushf oo' Zunoon*, as a book of traditions. The work apparently intended as the second, but misnamed *Filk-al-elm*, instead of *Fil kulám* (on theology), is well known in India, by the name of *Fik h-i-Akbur*. The third is unknown. D'Herbelot, who seems to have been Mr. Hamilton's principal authority, mentions the three works, under the title of *Abou-Hanifah*.

<sup>3</sup> Mr. Hamilton (in his Preliminary Discourse, p. 36,) has inadvertently stated the *Jamá-i-kubeer* to be a collection of traditions, called also the *Jamá-i-saheeh*, by Yeessoo Mohummud bin Yeessoo al Termazi. The apparent origin of this mistake has been pointed out in a former note. He further remarks that the author of the *Jamá-i-sugheer* is uncertain. But independently of numerous other authorities, Imám Mohummud is expressly cited in the *Hidáyah* as the author of both works, and of the *Mubsoot*. (See vol. i. of the translation, p. 153). Mr. Hamilton has been led into another error, by supposing the *Mubsoot*, quoted in the *Hidáyah*, to have been written by Fukr-ool Islám Buzduvee; whereas, of the two *Mubsoot* cited by the author of the *Hidáyah*, one is the composition of Imám Mohummud, above noticed; and the other was composed by Shums ool Aimmah Surukhsee, as observed in a preceding note.

<sup>4</sup> The only work known to have been composed by Aboo Yoosuf is an *Adub ool Kázee*; and the reputation of this has been superseded by the celebrity of Khusaf's tract of the same title, already mentioned. He is said, however, to have furnished his pupil, Imám Mohummud, with notes (*amálee*) for a considerable part of his compositions; particularly for the *Jamá-i-sugheer*.

<sup>5</sup> The principal commentators of the *Jamá-i-sugheer* are Shums ool Aimmah Surukhsee; Aboo Bukr Ahmud Rázee, commonly called Jussás, (the plasterer); Aboo Jáfur

India, except an imperfect copy of the commentary of Kázee Khán, on the *Jámá-i-sugheer*, which was obtained from the library of the Newab of Oúd'h; and is in the possession of the nizámut adawlut. Nor is there a treatise on the Mosulman law, written during the four first centuries of the *Hijrah*, at present, in the possession of any person, from whom inquiry could be made upon the subject, at Calcutta.<sup>1</sup>

The oldest work on jurisprudence in the possession of the law officers of the nizamat adawlut, and other learned Mosulman lawyers, in Calcutta, is the *Mokhtusur ool Kudooree*, a compendium, or general law-tract, composed by Imám Aboo'l Hosén Ahmud, of Kudoor, a quarter of Bughdád, who died A. H. 428. It is often referred to in the *Hidáyah*, and described in the *Kushf oo' Zunoon* as a book of authority in general use, and held in the highest estimation. It is said to contain twelve thousand cases; and has been illustrated in numerous commentaries; among which several are quoted in the *Futawá-i-Aadhungeeree*; but are not now known to be extant in Hindoostan.<sup>2</sup>

The *Mokhtusur*, or compendium, of *Kudooree*, and commentaries upon it

• Ahmud Tahávee; Fukur ool Islám Aleé Buzduvee; Aboo Nusur Ahmud ool Itábee, of Bokhárá; Aboo'l Lys Nusur, of Sumurkund; Aboo Nusur Ahmud, Isbeejábee; Husun bin-i-Munsoor, of Oúzjund, better known by the appellation of Kázee Khán; Táj oo' deen Abd ool Ghufur Kurduree; Zuheer oo' deen Ahmud Tumurtáshee; and Kázee Musáood, of Yuzd; and Aboo Sáeed Mootuhur, of the same city; whose commentary is quoted by the title of *Tuhzeeb*. The seven persons first mentioned have also written comments on the *Jámá-i-kubeer*; besides Kázee Aboo Zýd Abdoollah, of Duboos; Boorhán oo' deen Mahmood, author of the *Moheet-i-Boorhánee*; Boorhán oo' deen Aleé, author of the *Hidáyah*; Shums ool Aimmah Mohummud, called *Huhádee* (the confectioner); Ibn-i ubduk Joorjánee; and Jumál oo' deen Mahmood, of Bokhárá, whose common designation is Husferee (the mat-maker); and whose second commentary is often quoted by the name of *Tukreer*. The *Tukreer* and *Doorur* are also known comments on the work in question; the former by Aboo'l Abbas Ahmud; the latter by Násiroo' deen Mohummud, of Damascus.

<sup>1</sup> It does not appear that any work on jurisprudence was published during the first century of the *Hijrah*: or that any was written on the doctrines of Aboo Huneefah, during the second century, except the treatises, which have been noticed, of his two disciples Aboo Yoosuf, and Imám Mohummud. In the third and fourth centuries, besides commentaries on the works of the latter, (which as fundamental authorities, are denominated *Osool*, or Original) the following law-tracts are stated to have been composed; and are briefly described in the *Kushf oo' Zunoon*:—An *Adub ool Kázee* and *Nuwádir*, by Mohummud bin-i-Sumáah, who died A. H. 233. Another treatise, of the former title, by Aboo Házim Abd ool Humeed, who died in 292. Several treatises of the latter title, by Ibn-i Roostum, Hishám, and others. Also books of both titles, and a compendium of the law, entitled *Mokhtusur-i Tahávee*, by Aboo Jáfur Ahmud, of Tahá, in Egypt, who died A. H. 371; and who seems to be the author erroneously cited by the name of Aboo Fáka, in Mr. Hamilton's Prel. Dis. p. 38. Another compendium, entitled *Mokhtusur-i Kurkhee*, by Aboo'l Hosén Abdoollah, of Kurkh (a ward in the city of Bughdád) who died A. H. 340. And a *Nuwádir*, with two other books, entitled *Oúzoon* and *Nuwazil*, by Aboo'l Lys Nusur, of Sumurkund.

<sup>2</sup> The titles and authors of the principal commentaries are as follow:—The *Siráj-i-Wuhháj*, and *Jókhurah-i-ny yirah* (the latter abridged from the former) by Aboo Bukr bin-i-Aleé, commonly called *Hudádee* (the blacksmith.) Ahmud bin-i-Mohummud also made an abridgment of the *Siráj-i-Wuhháj*, which is quoted by the title of *Bukur-i-Zákhir*. The *Mooltumus ool ikhwán* by Aboo'l Maalee, of Ghuzna. The *Kifáyah*, by Shums ool aimmah Ismaeel, of Byhuk. The *Biyyán*, by Mohummud bin-i-rusool, of Toúkát. The *Lóbb* by Julál aboo Sáeed Mootuhur, of Buzdah. The *Yunábee á*, by Budr oo' deen Mohummud, of Ushbeeleeh. The *Kholásut oo' duláeel*, by Hosám oo' deen Aleé, of Mukkah. The last mentioned commentary is highly praised, for its utility, in the *Kushf oo' Zunoon*, and is stated to have been further improved by the annotations of Ibn-i Subeeh oo' deen Osmán, a native of Tartary. Mr. Hamilton, (in his Prel. Disc. p. 36, 37,) has erroneously mentioned the commentary of Kudooree,

Two descriptions of books in use for expounding the Mohummudan law: elementary and practical.

The other books in actual use for expounding the Mohummudan law are of two descriptions. The first consist of texts and comments, which, in a scientific method, state the elements and principles of the law; establish them by proofs and reasoning; and illustrate the application of them by select cases, real or supposed; such as the *Hidáyah*, *Kunz oo' dukáyik*, *Vikáyah*, *Nikáyah*, and *Ashbah o' Nuzávir*, with their respective commentaries. The second description is commonly, but not always, distinguished by the title of *Futáwá*; and is, for the most part, a collection of law-cases, arranged under proper heads, with a short recital of facts and circumstances, without arguments, and with authorities only for the cases as quoted; being intended chiefly for practical purposes; whereas the elementary works first mentioned are more calculated for study and instruction. The *Futáwá-i Kázee Khan* by Fúkr oo' deen Husun, of Oúzjund, in Furgháná, who was contemporary with the author of the *Hidáyah*, and whose collection is esteemed of equal authority with that celebrated work, must, in some measure, be excepted from the above remark; as it illustrates many cases by the proofs and reasoning upon which the decision of them is founded.<sup>1</sup>

*Futawá of Káze Khan.*

Other *Futawá* extant in India.

The other *Futáwá* extant in India, besides those already mentioned in the preceding pages and notes, are the *Khuzánut ool Moofteen*, *Futáwá-i-Buzáziyah*, *Futáwá-i-Nukshbundiyyah*, *Mun'h ool ghufár*, and *Mokhtar ool Futáwá*, by unknown authors; the *Foosool-i-Isturooshee*, by Mohummud bin-i Mahmood, who compiled it in the 625th year of the *Hijrah*; <sup>2</sup> the *Futáwá-i-Ibráheemsháhiyyah*, by Shaháb oo' deen Ahmud, a native of Hindoostan, who composed it for Sooltán Ibráheem Sháh, at Joúnpoor, in the 9th century of the *Hijrah*; <sup>3</sup> and the *Futáwá-i-Aálumgeeree*, compiled a Dehly, by order of the Emperor Aúrungzéb (also called Aálumgeer) in the 11th year of his reign, corresponding with A. H. 1067.

The *Hidayah*, and its commentaries.

The *Hidáyah* is so well known, from the English version of it, made by Mr. Charles Hamilton, and published in the year 1791, that it will be unnecessary to say much of it. The *Kázee ool Koozáat*, in his catalogue of books already adverted to, describes it in the following terms. "The *Hidáyah* is a

as quoted in the *Hidayah*, instead of his *Mokhtusur*. He appears to have made a further mistake in stating the commentary of Kudóree to be upon the *Adub ool Kázee* of Aboo Yoosuf, whereas no comment of that work is noticed in the *Kushf oo' Zunoon*; but Kudóree is specified as one of the commentators of the *Adub ool Kázee* of Khusaf, mentioned in a preceding note.

<sup>1</sup> A complete and accurate copy of the *Futáwá-i Kázee Khán*, supposed to have formerly belonged to the royal library, is among the books of the nizamat adawlut, obtained from Lukhnow. The author of the *Kushf oo' Zunoon* and the present *Kázee ool Koozáat*, concur in extolling this work, as replete with cases of common occurrence, and consequently of particular utility for practical reference. A digest (*Moruttub*) of the cases recited in it is also mentioned in the *Kushf oo' Zunoon*, as made in the seventh century of the *Hijrah*, by a learned Syrian, named Mohummud bin-i-Moostufaáfundee, and entitled *Wuhájoo' Shuree át*.

<sup>2</sup> The court of nizamat adawlut have a complete copy of this compilation, presented to them, with six other law books purchased at Lukhnow, by the *Kázee ool Koozáat*, Mohummud Nujm oo' deen. It consists of thirty sections, upon *Moámulát* only: like the *Foosool ool Imádeeyah*, before mentioned. The contents of both were arranged and incorporated in a collection, entitled *Jámá ool Foosoolyn*, by Budr oo' deen Mahmood; better known by the name of Ibn-i-Kázee-i-Sumáwunah, who died A. H. 823. The author of the *Kushf oo' Zunoon* states this work to be in great estimation with the learned, as a civil digest; but, though often quoted as an authority, it is not known to be at present in India.

<sup>3</sup> Ibráheem Shah reigned at Joúnpoor (during the confusion of the Empire of Dehly, consequent to the invasion of Tymoor) for forty years, and died A. H. 844. The court of nizamat adawlut possess an entire copy of the work referred to; but it is a mixed collection, and not deemed authoritative.

commentary upon the *Bidáyut ool Moobtudee*, and both the text and comment were composed by Shýkh Boorhán oo' deen Aleé, son of Abou Bukr, of Murghheenán, who lived to the age of sixty-two; and, after employing thirteen years in the composition of the latter work,<sup>1</sup> departed from this world A. H. 593. The general arrangement, and divisions of it, are adopted from the *Jámá-i-Sugheer* of Imám Mohummud. It is celebrated amongst the learned for its selection of law cases, and connection of them with the proofs and arguments by which they have been determined. Wherefore in every age it has been esteemed by lawyers; many of whom have written comments and annotations upon it." It is spoken of in nearly the same language, by the author of the *Kushf oo' Zunoon*, who adds "it is a rule observed by the composer of this work to state first the opinions and arguments of the two disciples (Abou Yoosuf and Imám Mohummud); afterwards the doctrine of the great Imám (Abou Huneefah); and then to expatiate on the proofs adduced by the latter, in such manner as to refute any opposite reasoning on the part of the disciples. Whenever he deviates from this rule it may be inferred that he inclines to the opinion of Abou Yoosuf and Imám Mohummud. It is also his practice to illustrate the cases specified in the *Jámá-i-Sugheer*, and by Kudooree: intending the latter, whenever he uses the expression *he has said in the book*. In praise of the *Hidáyah*, it has been declared, like the *Korán*, to have superseded all previous books on the law; that all persons should remember the rules prescribed in it; and that it should be followed as a guide through life." This eulogium on the *Hidáyah* is confirmed in a paper written by Moúlavee Mohummud Rashid, one of the Mooftees of the supreme court of judicature and courts of sudder dewanny and nizamat adawlut, as well as one of the most learned Mosulmans in India; who remarks on the text, and some of the principal comments, to the following effect:—"No text or commentary, now extant, can be compared with the *Hidáyah* as a digest of approved law cases, illustrated by the proofs and arguments which establish them. It is therefore, with its comments, fit to be the standard of legal decision in the present times. Many commentaries have been written upon it: but four only, the *Niháyah*, *Ináyah*, *Kifáyah*, and *Fut'h ool Kudeer*, are forthcoming in Bengal. The *Niháyah* was first composed: and has superior credit as being the original from which the others have borrowed. But the author of the *Ináyah* has merited esteem by his studious analysis; and interpretation of the letter and meaning of the *Hidáyah*. The *Kifáyah* also deserves commendation, from its concise statement of the substance of other commentaries, as well as from some additions to them. And the *Fut'h ool Kudeer* is preferable to the whole, as an ample collection of cases, (rendering it equal in this respect to a *Futáwá*) expressed with suitable brevity of language."

<sup>1</sup> The *Niháyah* was composed by Hosam oo' deen Hosén Ibni Aleé, said to have been a pupil of Boorhán oo' deen, author of the *Hidáyah*. The latter having, from some unknown cause, omitted the law of inheritance, it has been added by the commentator. But this part of the *Niháyah* does not appear to have obtained equal celebrity with the *Furá, eez i sirajee yah* mentioned in a former note. The *Kushf oo' Zunoon* notices two commentaries of the title of *Ináyah*; the first of which was commenced by Abou'l Abás Ahmud, a *Kázee* in Egypt, who died A. H. 710; and was completed in the succeeding century of the *Hijrah* by Kázee Sáeed oo' deen, of Dubur. The second, which is that referred to as extant in India, was composed by Shýkh Akmul oo' deen Mohummud, who died A. H. 786. Imám oo' deen Ameer Kátib Bin-i Ameer Omur, who had previously written another commentary, entitled *Gháyutool biyán*, after employing himself for twenty-seven years at Cairo, and other places, to render his second work more complete, finished the *Kifáyah*, at Damascus, in the 747th year of the *Hijrah*. The *Fut'h ool Kudeer* is stated to have been commenced by its author Kumál oo' deen

The *Kunz oo' dukáyah*, and its commentaries.

The *Kunz oo' dukáyah* has been already mentioned, as composed by Háfiz oo' deen, author of the *Káfí* and *Wáfee*. It is a short general treatise of law, used in Mosulman colleges, as an elementary book of instruction; but superseded, as a book of reference for legal exposition, by its commentaries; of which the following are extant in India. The *Tubí-een ool hukáyah*, by Fuhr oo' deen Aboo Mohummud Osmán, of Zylá, who died A. H. 743. His comment is valued by the followers of Aboo Huneefah, as containing a complete refutation of the opposite doctrine of Shafí'í. The *Buhr oo' ráyah*, by the learned Zýn ool Aábideen Ibn-i Nujeem, of Egypt, left incomplete at his death, A. H. 970; and unequally finished by his brother Siráj oo' deen Omur, who also wrote a commentary entitled the *Nuhr-i-fáyik*, but of inferior merit to that of Zýn ool Aábideen; which is held in the utmost estimation; and is spoken of in the *Kushf oo' Zunoon* as equalled only by the *Fut'h ool Kudeer*, Ibn-i Homám's commentary on the *Hidáyah*. The *Mullub-i-fáyik*, or, as more generally called *Aynee*, by Budr oo' deen Mohummud Áynee, of Dubur in Arabia. This commentary is also esteemed, as containing an ample collection of law cases: and though surpassed, in this respect, by the *Buhr-i-ráyik*, it has the advantage of having been brought to a conclusion by the author; whose erudition obtained him the title of *Ulámah*, in common with Zýn ool Aábideen.<sup>1</sup>

The *Vikáyah*, and commentaries.

The text of the *Vikáyah*, composed in the 7th century of the *Hijrah* by Boorhán oo Shureeút Mahmood, son of the first *Sudr oo Shureeút*, like that of the *Kunz oo Dukáyah*, has been superseded, for legal consultation, by its more extensive commentaries; especially by that of the second *Sudr oo Shureeút*, Obýd oollah bin-i-Musâood, who died A. H. 750; distinguished by the title of *Shurh-i-Vikáyah*; and combining, with the original treatise, an ample comment in illustration of it. But both are used in Mosulman Colleges, for instruction in the science of law, preparatory to the study of the *Hidáyah*; upon which the *Vikáyah* is founded; being, as its title at length imports, (*Vikáyut oo riwáyah*, see *Musá'el il Hidáyah*;) the *Custos*, guardian, or preserver, of the reports of cases in the *Hidáyah*. Other commentaries are

Mohummud, of Seewás, commonly called Ibn-i-Homám, in the 29th year of the *Hijrah*; and to have occupied a considerable part of the remaining period of his life, which was terminated in 861. Other commentaries upon the *Hidáyah* are mentioned in the *Kushf oo' Zunoon*; but as they are not procurable in India, it will be sufficient to notice the *Fiwáeed*, by Humeed oo' deen Ale, of Bokhárá, who died A. H. 667; and is supposed by some to have been the first commentator; but his tract, being extremely brief, has been superseded by the subsequent comments; the *Miáráj oo' diráyut*, by Kuwám oo' deen Mohummud, also of Bokhárá, who died A. H. 747; and whose commentary is quoted in the *Aálumgeeree*: And the *Odah* by Kumál oo' deen Mohummud, also quoted: though it is described as rather an abstract than a comment, being a methodical collection of the law cases contained in the *Hidáyah*, without the arguments stated in proof of them. The *Niháyah, ool Kifáyah*, by Táj oo' Shureeyut Omur, is also mentioned in the *Kushf oo' Zunoon* as a commentary on the *Hidáyah*; but the *Kázee ool Koozút*, in describing an imperfect copy of it, belonging to the nizamat adawlut, terms it a *Hásheeah*, or marginal note book. An incomplete copy of the *Kifáyah* is also among the law books of that court.

<sup>1</sup> Another commentary on the *Kunz oo dukáyah*, entitled *Maádun*, is known in India. But the name of the author has not been ascertained. The *Eezáh*, by Shýkh Yahyá, and *Rumz ool Hukáyah*, by Kázee Budr oo' deen Mahmood, are also noticed, with the names of some other commentators, in the *Kushf oo' Zunoon*; but they are not celebrated, or quoted as authorities. The court of nizamat adawlut possess an incomplete copy of the *Buhr oo' ráyah*; on which the Kázee ool Koozát remarks (in his catalogue) that "it comprizes a compilation of cases, general and particular; with the useful result of the author's researches upon a variety of legal questions; and is received as authentic by the followers of Aboo Huneefah in every city of Islám."

mentioned in the *Kushf oo' Zunoon*; but they are not known to be extant in India; or quoted as authorities.\*

The *Nikāyah* was abridged from the *Vikāyah* by the second Sudr oo' Shuree'ut, already mentioned as the principal commentator on the *Vikāyah*. It is also called *Mokhtusur-i-Vikāyah*, and used as a book of instruction; the rules and cases contained in it being committed to memory by the student. But its utility, for legal reference, is superseded by its commentaries; of which three are extant, composed by Abou'l Mukārim bin-i Abdoollah, A. H. 907; by Abdool Alea, Bin-i-Mohummud Birjindee, in the year 935; and by Shums oo' deen Mohummud, of Khoristān, in 941. The whole of these comments are held in esteem; but the latter, entitled *Jāmā oo' rumooz*, is the most copious.\*

The *Nikāyah*, and comments.

The *Ashbah o Nuzāyir* is an elementary treatise, composed in the tenth century of the *Hijrah*, by Zyn ool Aābideen, already mentioned as the author of the *Buhr-i-rāyik*. It is stated in the *Kushf oo' Zunoon* to consist of seven sections, (denominated *fun*); the two first of which relate to the general principles and rules of law; and the *Kāzee ool Koozāh*, in describing a copy of it, which belongs to the nizamat adawlut, observes, that "although a short tract, it contains legal *principia*, from which numerous cases may be deduced; wherefore to able lawyers it is of the utmost advantage." Thirteen commentaries upon it are noticed in the *Kushf oo' Zunoon*, but none of them are known to be in India.<sup>1</sup>

The *Ashbah o Nuzāyir*, and its commentaries.

Besides the texts and commentaries above described, as in actual use for legal expositions, the *Mujmā ool buhryn*, a text book composed by Mozufur oo' deen Ahmud, of Bughdād, A. H. 690, is also in the possession of a learned Mosulman in Calcutta,<sup>4</sup> together with one of its commentaries, writ-

The *Mujmā ool buhryn*, and comments.

<sup>1</sup> Numerous *Hawāshee*, or books of annotation, have also been written on the text and commentaries; of which the most celebrated is the *Hāsheeah* of Yoo'suf bin-i Jonýd, commonly called Akkee Chulpee. This work, entitled *Zukheerut ool Okba*, is in the possession of the court of nizamat adawlut, who have also a correct and complete copy of the *Shurh-i-Vikāyah*. It may be useful to add that a Persian translation of the latter has been made by a person named Abd-ool Huk Sujāwul, of Surhind; who, in his preface, states it to have been completed A. H. 1076; during the reign of Aúrungzéb. A copy of this version is in my possession. The language is not elegant; but it bears the character of accuracy; and with a careful revision, it may deserve publication. In bulk it does not much exceed a fourth of the Persian Version of the *Hidayah*; made by the former chief Kāzee, Gholām Yuhýá-Khán, and his learned associates, employed for that purpose under the patronage of Mr. Hastings; a revised edition of which, under the superintendence of Moúlavee Mohummud Rāshid, is now printing, at my suggestion, by order of Government; and besides facilitating the study of the Arabic text, will tend to explain and correct the English translation; which, though on the whole deserving of praise, has been found in some parts inaccurate, and in many less intelligible than the Persian version. It may be proper to add in this place, that in noticing, for obvious reasons, what has appeared upon inquiry to be erroneous or deficient in the late Mr. Hamilton's translation of the *Hidayah*, no intention whatever is entertained of impeaching the personal merits or reputation of that gentleman; who labored under a material disadvantage in not having completed his arduous and laudable undertaking in India.

\* Complete copies of the three commentaries are among the books procured from Lucknow, for the court of nizamat adawlut.

<sup>2</sup> Moúlavee Mohummud Rāshid possesses two commentaries on the *Ashbah o Nuzāyir*, one of which, called the *Ghumzool Oyoon*, was written by Sy'iid Ahmud bin-i Mohummud Humavee. The author of the other is unknown.

<sup>4</sup> Moúlavee Kureem oo' deen, by whom (in concert with Moúlavee Mohummud Rāshid) I have been materially assisted in preparing the short account given of books on the Mohummudan law; and who has made for me a complete Persian translation, from the Arabic original, of the *Kushf oo' Zunoon*. He received the *Mujmā-ool buhryn*, and its commentary, from Shuráfut Mohummud Khán, Meer Moonshée to the

ten by Abd oo' Luteef Bin-i-Abd ool Azeez; but as no other copy of either the text or comment is known to be forthcoming; they cannot be in general use.<sup>1</sup>

1. *Futawá-i-Aálumgeeree.*

Of the books of *Futawá* which have been mentioned, none appear to require further notice, except the *Futawá-i-Aálumgeeree*. Mr. Hamilton, by an extraordinary mistake, has stated this work to have been "composed in the Persian language," by the authority and under the inspection of the Emperor Áurungzéb;" whereas it is well known to have been written in Arabic, the usual language of Mohummudan law and science; and to have been translated into Persian, by order of the Emperor's daughter, the Princess Zeb oo' Nisa. Several copies of the Arabic original are in Calcutta; and some imperfect copies of the Persian version; or rather of parts of it.<sup>2</sup> In the catalogue of books appertaining to the nizamat adawlut (among which is an incomplete copy of the Arabic *Futawá-i Aálumgeeree*) the Kázee ool Koozáat describes this work in the following terms:—"It was commenced A. H.

Nuwab Mozuffur Jung; who supported a Mudrusah at Moorshidábád, in which Kurcem oo' deen was Mudarris, or lecturer.

<sup>1</sup> In addition to the books on jurisprudence, which have been noticed; the following are described in the *Kushf oo' Zanoon*; but none of them are known to be at present in Hindoostan. The *Ajnás* and *Ahkám*, by Abóol Abás Ahmud Nátfée, who died A. H. 446; the *Tujnees o' Muzeed* by the author of the *Hidayah*; the *Hávee ool Huseeree* by Mohummud-bin-i-Ibraheem, of Huseer, who died A. H. 505. The *Futawá-i-koobrá* by Shaheed Hisam oo deen Omur, who suffered martyrdom in the 536th year of the *Hijrah*. The *Kholásut ool futawá*, by Tahir bin-i-Ahmud, of Bokhárá, who died A. H. 542. The *Mooltukut*, by Násir oo' deen, Abool Kasim, of Sumurkund; finished A. H. 549. The *Hávee ool Koodsee* by Kázee Jumal oo' deen Ahmud of Ghuzná, who lived in the latter part of the 6th century of the *Hijrah*. A *Tulkhees* (abridgment) of the *Jamá i-kubeer*, by Kumal oo deen Mohummud, of Khilat, who died A. H. 652. The *Mokhtár*, and its commentary, the *Ikhtiyár*, by Mujd oo' deen Abdoollah of Moosul, supposed to have flourished in the 7th century of the *Hijrah*. The *Ghoorur ool Ahkám*, and its comment, the *Doorur ool hookkám*, by Mohummud bin-i Furámoorz, commonly called Moolla Khoosró, who died A. H. 887; and the *Mooltuka ool Abhoar*, by Ibraheem bin-i-Mohummud Chulpee (a Syrian) finished A. H. 923. Of these works the three last mentioned only are text books. The remainder (excepting the abridgment of Imám Mohommud's great *Jama*), are collections of cases, of the nature of *Futawá*. A further collection, entitled *Khusanut ool futawá*, by Ahmud bin-i-Mohummud, is among the books of the nizamat adawlut, and supposed by the Kázee ool Koozáat, to have been compiled towards the end of the 8th century of the *Hijrah*. Also a Persian compilation, named *Futawá-i-Kurakhaneh*, the cases included in which were collected by Moolla Sudr oo deen bin-i Yákoob, and arranged, some years after his death, by Kurá Khán, in the reign of Sooltan úla oo' deen. The Kázee ool Koozáat has likewise presented to the nizamat adawlut a small Persian book, entitled *Mokhtur ool Ikhtiyár*, written A. H. 971, by Ikhtiyár son of Ghyás oo' deen Husun; containing, besides the duty of a Kázee and Mooftee, legal forms of various descriptions for practical use.

<sup>2</sup> Preliminary Discourse; p. 44.

<sup>3</sup> Mr. H. Colebrooke possesses a folio volume, containing about half of the entire translation, from the commencement to the book upon evidence. I have also a volume which contains from the book on marriage, to that upon endowments, or religious and charitable appropriations. And, at my suggestion, the Governor General in Council has been pleased to instruct the resident at Dehly to endeavour to procure two or more complete copies of the Persian version made by order of Zeb oo' Nisa, with a view to prepare a collated transcript, which may be hereafter printed and published. I have likewise a correct Persian translation of the book on Jinayat or offences against the person, made for me, a few years since, by Moúlavee Sáeed oo deen, (now law officer of the Burely court of circuit) under the superintendence of his father, the Kázee ool Koozáat, who has added notes of explanation where they appeared requisite. This version will probably be printed and published, as it well deserves to be.

1067, corresponding with the 11th year of Aálumgeer's reign. Credible persons have related, that when Meerzá Kázim, author of the *Aálumgeernamah* had finished, and presented to His Majesty, the history of the first ten years of the reign, it occurred to the King that there were many books of history in the world, and that from the inclination which mankind have to read such books, they are composed without orders from kings and nobles; that the foundation of good government is justice; and that this depends upon a knowledge of the ordinances of the law; that although the learned of every age had compiled expositions of the law, yet in some instances the examples were so dispersed that they could not readily be found, when required; and in others, the cases of less weight were not distinguished from those adjudged to be authoritative; whilst some decisions also had been unnecessarily repeated; and others, though requisite, had been omitted; wherefore it was proper that, in the present reign, a new *Futáwá* should be compiled, to be arranged in the most approved manner; and to contain the most authoritative decisions of law, including every useful case, which had been adjudged, without repetition or omission. As soon as the King had formed this design, he ordered Meerzá Kázim to discontinue writing the *Aálumgeernamah*; and not to take in future the sum allotted for it from the royal treasury. He then assembled a number of eminent lawyers from the *Punjab*, the environs of *Sháhjahán-ábád*, *Akbur-ábád*, *Ilah-ábád*, and the *Dukhun*; and employed them in compiling the work, which was afterwards called the *Futáwá-i-Aálumgeeree*. In truth no other *Futáwá* is equal to it in excellence. It has become celebrated in every city, as well in Arabia as in other countries; and is termed at Mecca the *Futáwá-i-Hind*, or Indian expositions. It is esteemed by the learned of every country, and is received as an authority for law decisions in this empire." It is added, that six lacks of rupees are said to have been disbursed in stipends to the learned compilers, the purchase of books, and other expenses attending the execution of the work.

The *Futáwá-i-Aálumgeeree* being four times the size of the *Hidáyah*, and containing little more than a recital of law cases, without the arguments and proofs, which are diffusively stated in the *Hidáyah*, it must possess an advantage over that work, for practical use, in its greater number of cases and examples. On the other hand, the full illustration of the law, its principles, and the different doctrines promulgated by some of the most eminent expounders of it, which distinguish the *Hidáyah*, give an evident preference to it as a book of elementary instruction. The authority of the *Hidáyah*, as an original composition by a celebrated jurist, who, from his superior knowledge and qualifications, was esteemed a *Moojtahid*, is also above that of the *Futáwá-i-Aálumgeeree*; which, however valuable, as the latest and most comprehensive collection of cases, is held in less comparative estimation, from its being a modern compilation, made by several persons, of different judgment, and unequal ability. Without contrasting their respective merits, however, the one is universally admitted to be a most useful supplement to the other; and a conversance in both, or an easy means of reference to them in cases of judicial occurrence, must be of essential use towards the due administration of the Mohummudan law, as far as that law is declared to be the established rule and standard of decision. The following sketch of the criminal law will therefore be taken chiefly from the *Hidáyah* and *Futáwá-i-Aálumgeeree*; the former supplying, in general, the rules and principles; the latter, in addition to what are specified by the author of the *Hidáyah*, any useful cases cited in illustration of them.¹

¹ Mr. Hamilton's translation of the *Hidáyah* renders it unnecessary to state the general contents of that work. The *Futáwá-i-Aálumgeeree* consists of 61 books (*Kitáb*)

The *Hidáyah* and *Futáwá-i-Aálumgeeree* compared and distinguished

Authorities for the following sketch of the criminal law



General heads  
or principles.

The provisions of the Mohummudan law, which have immediate reference to the definition and punishment of crimes, may be classed under three general heads, or principles of penal justice. I. *Kisās*, or retaliation : with its appendage *Diyut*, the fine of blood. II. *Hoodood* ; (plural of *hudd*;) prescribed or fixed penalties. III. *Tāzeer* and *Seeāsut* ; discretionary correction, and punishment.

Crimes pro-  
vided for un-  
der each head.

The crimes, provided for under the first general head, are denominated *Jináyát* ; or, in the legal sense of that term, offences against the person ; but are restricted to homicide, maiming, and wounding. The second head includes adultery, or rather whoredom (*Zina*) whether between married or unmarried persons ; slander of whoredom, (*Kuzuf*;) drinking wine, (*Shoorb*;) theft, (*Surikah-i-Soghrá*;) and robbery, (*Surikah-i-kobrá*). The

in the following order: 1. *Taháru*t, purification. 2. *Sulát*, prayer. 3. *Zukát*, alms. 4. *Sóm*, fasting. 5. *Hujj*, pilgrimage. 6. *Nikah*, marriage. 7. *Ruzáá*, fosterage. 8. *Tulák*, divorce. 9. *Úiák*, manumission. 10. *Aýmán*, vows. 11. *Hoodood*, fixed penalties. 12. *Surikah*, larceny. 13. *Siyur*, institutes or regulations concerning infidels, apostates, and rebels. 14. *Lukeet*, foundings. 15. *Looktah*, troves. 16. *Ibák*, absconding of slaves. 17. *Mufkood*, missing persons. 18. *Shirkut*, partnership. 19. *Wukf*, endowment ; or religious and charitable appropriation. 20. *Býá*, sale. 21. *Surf*, exchange of coin or bullion. 22. *Kufáút*, bail. 23. *Huwáút*, transfer of debts. 24. *Adáb ool Kázee*, the duty of a *Kázee*. 25. *Shahádut*, evidence. 26. *Rojoó á un*, *Shahádut*, retraction of evidence. 27. *Vukáút*, agency. 28. *Dáwá*, claim. 29. *Ikrár*, acknowledgment. 30. *Soolh*, composition. 31. *Mozárubut*, copartnership in stock and labor. 32. *Wudeeút*, deposit. 33. *Ákreeyut*, lending without return. 34. *Hibah*, gift. 35. *Ijárah*, hire and farm. 36. *Mokátub*, covenanted slave. 37. *Wula*, connection of emancipator and freedman ; or of patron and client. 38. *Ikráh*, compulsion. 39. *Hujr*, inhibition and disqualification. 40. *Mázoon*, licensed slave, and ward. 41. *Ghush*, usurpation. 42. *Shoofáh*, right of vicinity. 43. *Kismut*, partition. 44. *Mozárafut*, compact of cultivation. 45. *Moáámulát* or *Mosákát*, compact of gardening. 46. *Zubáyih*, animals slain by *Zubh*, or incision of the throat. 47. *Oozheeyah*, sacrifice. 48. *Kurahíyut*, abomination, disapprobation, or censure. 49. *Tuhurree*, presumptive preference. 50. *Thyá ool muwát*, cultivation of waste land. 51. *Shirb*, right to water. 52. *Ushribah*, intoxicating liquors. 53. *Sýd*, game. 54. *Rihn*, pledge. 55. *Jináyát*, offences against the person. 56. *Wusáyá*, testamentary bequests. 57. *Muházir ó Sijillát*, judicial proceedings and decrees. 58. *Shooroot*, legal forms. 59. *Hiyul*, legal devices. 60. *Khoonsa*, hermaphrodite. 61. *Furá'eez*, rules of inheritance.

Of the sixty-one books enumerated, fifty-five correspond with similar titles in the *Hidáyah*. Two other books in the latter work, entitled *Diyut* (the fine of blood), and *Mu áúkil* (exaction of the fine of blood), are included in the *Aálumgeeree* as chapters of the book of *Jináyát*. The book of *Shirb* in the *Aálumgeeree* forms a section of the book entitled *Ihyá ool muwát* in the *Hidáyah*. The remaining five books of the *Futáwá-i-Aálumgeeree*, viz. those entitled *Tuhurree*, *Muházir ó Sijillát*, *Shooroot*, *Hiyul* and *Furá'eez*, are not included in the *Hidáyah*.

The general division and arrangement of both the *Hidáyah* and *Aálumgeeree* appear to have been adopted from the *Jámá-i-Sugheer* of Imám Mohummud. The same order is also observed in most other works written by the followers of Aboo Huneefah ; and the author of the *Buhr-oo-ráyk* has endeavoured to show that it is founded on a principle of successive connection. But his reasoning does not appear satisfactory. It may be useful to add, however, that the Mosulman law in the most extensive sense of the term (*Shurá*, or *Deen-i-islám*), comprehends the ordinances of religion, and the duties of man towards his Creator, as well as his rights and obligations towards his fellow creatures. It is therefore stated in the *Buhr-i-ráyk* to comprise five principal heads ; namely, 1. *Átikádát*, articles of faith. 2. *Ibádát*, acts of worship and piety. 3. *Moáámulát*, affairs of life, or civil transactions. 4. *Muzajir*, punishments for the prevention of crimes. 5. *Adáb*, manners, or rules of behaviour. In books of jurisprudence (*fiqh*) the first and last heads are omitted. The other three are included ; and the head of *Ibádát* always precedes the *Moáámulát*, and *Muzajir*, as of superior importance.

<sup>1</sup> *Kutl*, *Kutá*, and *Jur h*. See Introd. to Book of *Jináyát* in *Hid.* and *F. A.*

third head comprizes all crimes not expressly falling within the laws of *Kisás* and *Hudd*, together with such as, though comprehended in the general provisions of those laws, are specially excepted from the operation of them, by some doubt, or legal defect (*Shoobhah*), which bars the adjudication of *Hudd* or *Kisás*.

Homicide is either lawful and justifiable; or unlawful and penal. Justifiable homicide (*Kutl-i-mobáh*) is not distinctly treated of in books of Mohummudan law; but is incidentally mentioned, as commanded in the advancement of religion, or justice; as authorized in the defence of person, or property; and for the prevention of an atrocious crime; or as exempted from the provisions against unlawful homicide in consideration of some circumstance of necessity or justification.

Justifiable homicide.

The following instances of justifiable homicide are expressly noticed in the *Hidáyah*, *Futúwá-i-Aálumgeeree*, or other authorities.

In what instances expressly stated.

1. In prosecution of war against hostile infidels, for the advancement of *Islám*, or in support of a Mosulman community. This is enjoined by the *Korán*; but the injunction for offensive warfare against unbelievers is considered to be sufficiently observed when it is carried on by any one tribe or party of Mosulmans, and it is not then obligatory upon the rest.<sup>1</sup>

In prosecution of war against hostile infidels.

2. Of an apostate from the faith of *Islám*; who, after being duly called upon, may persist in his apostacy. It is stated in the *Hidáyah*, that, "if any person kill an apostate, before an exposition of the faith has been laid open to him; it is abominable (*Mukrooh*). Nothing however is incurred by the slayer; because the infidelity of an alien (in a state of hostility, which apostacy is considered to be) renders the killing of him admissible; and an exposition of the faith, after a call to the faith, is not necessary."<sup>2</sup>

Of an apostate from the faith of *Islam*.

3. Of an insurgent against the rightful *Imám*, when slain in the act of insurrection; or of open resistance to the established government. The same justification is extended by Aboo Huneefah and his disciples, to an insurgent killing a loyalist, in actual conflict, if the rebel maintain a plea of right in his rebellion; though Aboo Yoosuf, in this case, deems the slayer to be precluded from inheriting the property of the slain; and Shafi'ee considers the rebel, killing a person of protected blood, to be liable to all the penalties of wilful homicide.<sup>3</sup>

Of an insurgent against the rightful *Imam*.

4. Of a condemned criminal by order of the *Kázee*; or magistrate authorized to pass sentence of death.<sup>4</sup> In like manner, if the magistrate order

In execution of a legal sentence.

<sup>1</sup> *Hid.* Book. *Siyyur*. Chap. i.

The same book contains the Institutions of Mohummud for carrying on war against infidels, and dividing the plunder taken from them; for making peace with them, and granting them protection on their engaging to pay the *Jizyah*, or capitation tax; for regulating this tax, as well as the two descriptions of land tax (*Ooshoor* and *Khirdj*); for determining the rights of conquest over infidels, or by them. The corresponding book of *Siyyur* in the *F. Aálumgeeree* contains similar provisions; and the same subject is treated of in Sale's Prel. Disc. p. 142; but more fully by Reland in his treatise *De jure militari Mohammedanorum*.

<sup>2</sup> Trans. of *Hid.* vol. 2. §. 227. The law concerning apostates, whose persons and property are deprived of legal protection during their apostacy; and who are not even admitted to the protection of a *Zimnee*, or infidel subject; is explained, at length, in a chapter of the book of *Siyyur*, entitled *Moortudd*, expressly appropriated to them, in both the *Hidáyah* and *F. Aálumgeeree*.

<sup>3</sup> See the opposite arguments of Aboo Huneefah and his followers; in Trans. of *Hid.* v. 2. p. 254. Also the whole law respecting rebels, or more properly, *Religious Insurgents*, (being restricted to *Mosulmans*, dissatisfied with their *Imám*, of the same persuasion) in the chapter entitled *Boghát*, forming part of the book of *Siyyur*, in both the *Hidáyah* and *F. Aálumgeeree*.

<sup>4</sup> See concluding section of the book entitled *Adub ool Kázee* in the *Hidáyah*, p. 661, vol. 2, of the Translation.

the infliction of legal punishment not capital, and it happen to occasion death, no penalty is due according to the opinion of Aboo Huneefah and his followers; "because the magistrate is authorized in what he does by the law; and an act sanctioned by the law is not restricted to the condition of preserving life." Shafi'ee however maintains that the fine of blood, as for erroneous homicide, is due in this case to the heirs of the deceased; and that as the act of the magistrate was for the public advantage, it should be paid from the public treasury.<sup>1</sup>

In enforce-  
ment of a legal  
right to *Isas*,  
although a ju-  
dicial sentence  
have not been  
passed

5. Of a murderer, liable to *Kisás*; if killed by the person legally entitled to retaliation, or by his express direction; although sentence of *Kisás* may not have been passed by the *Kázee*. This assumption of right, without a judicial inquiry, is however deemed culpable; and the exercise of it by any other weapon than a sword, or similar instrument, is declared subject to correction. The same principle of justification is extended by Aboo Yoosuf and Imám Mohummud, to the case of a person entitled to *Kisás* for a limb; and causing death by striking it off; as "he has taken his right; and it is impossible to restrict dismemberment to the condition of preserving life." But Aboo Huneefah holds the price of blood for erroneous homicide to be due, as the slayer's "right was to dismember, not to kill;" and the exaction of retaliation being permitted only, not enjoined, should, in cases short of life, be taken subject to the condition of preserving life.<sup>2</sup>

In self de-  
fence  
to a man de-  
stroyed  
by  
a man  
with  
a sword  
or  
other  
mortal  
weapon

6. In self-defence, or in defence of another, if life be endangered, or be thought in danger, from the assault of a person having a drawn sword, or other mortal weapon. If however self-defence be manifestly attainable without killing the aggressor, it is not lawful to slay him. And it is declared in the *Hidayah*, that "if a person draw a sword upon another, and strike him, and then go away; and the person struck, or any other, afterwards wilfully kill the striker, such slayer is liable to retaliation. This is where the striker retires in such a way as indicates that he will not strike again; for as, upon his so retiring, he no longer continues an assailant, and the protection of his blood (which had been forfeited by the assault) reverts, retaliation is consequently incurred by killing him."<sup>3</sup> It is further stated in the *Hidayah*, that

<sup>1</sup> See the argument stated more at length, with a distinction between punishment inflicted by the magistrate, in pursuance of the law; and private chastisement, as by a husband of his wife: in which the preservation of life is requisite. *Hid.* chap. *Tázeeer*, Trans. vol. 2, p. 81.

<sup>2</sup> See this argument in Trans. of *Hid.* vol. 4, p. 316. The right of enforcing *Kisás* for wilful homicide without a judicial sentence is recognized in the *Hidayah*, and expressly declared in the *Moheet*, as quoted in the *F. A.* to the following effect:—"If a person wilfully murdered leave a single heir, such heir is entitled to put the murderer to death, with a sword or similar instrument, although the *Kázee* may not have passed sentence of *Kisás*. If the heir attempt to kill the murderer with any other weapon than a sword, or similar instrument, he should be restrained, or if he perpetrate the act, he is liable to discretionary punishment (*Tázeeer*;) but he is not otherwise responsible; as he has taken only his legal right in whatever manner he may have put the murderer to death." It is added,—that "if a person liable to *Kisás*, for a murder committed by him, be wilfully put to death by a stranger who is not one of the heirs of the slain, such stranger is subject to retaliation of death; although the heir of the person murdered should declare that he had ordered the stranger to kill the murderer; unless he can adduce witnesses to the truth of such declaration.

<sup>3</sup> Translation of *Hidayah*, v. 4, p. 293. See also the law of justifiable homicide in self defence, explicitly stated in page 291: but as the translation is somewhat inaccurate, as well as imperfect, and the subject is important, the following more correct version is submitted.

"If any person draw a sword upon a Mosulman, he (the Mosulman) is at liberty to kill him in self-defence; because the prophet has said, "He who draws a sword upon a Mosulman, renders his blood liable to be shed with impunity;" and also, because a

if a lunatic, or an infant, draw a sword upon a person, and be slain in consequence, the *fine* of blood is due from the slayer according to the opinion of Aboo Huneeifah, and Imám Mohummud; though not according to the opinion of Shafi'ee and Aboo Yoosuf.' It may be added from the *Zuheet-reeyah*, as quoted in the *Futáwá-i-Aálumgeeree*, that "Imám Mohummud has declared it justifiable to kill a person who attempts by violence to pluck out the teeth of another; where there is no one present to afford relief. But that it is not lawful to repel by homicide a forcible attempt to file the teeth, although there be no one at hand to relieve."

7. In preservation of property from theft or robbery. It is stated in the *Hidayah* that "if a person come in the night to a stranger and carry off his goods by theft; and the owner of the goods follow and slay him; nothing whatever is incurred; the prophet having said "ye may kill in preservation of your property." It is to be observed however that this is only where the owner cannot recover his property but by killing the thief.\* The same case is stated in the *Humádeeyah*, with this addition; "but if the thief throw

In preservation of property from theft or robbery.

person who thus draws a sword is equivalent to a rebel, on account of his hostility; and it is lawful to slay such, God having said in the *Korán*, "Slay those who are guilty of sedition, to the end that they may be restrained." Besides, it is indispensably requisite that a man repel murder from himself; and as, in the present instance, there is no method of effecting this but by slaying the person, it is consequently lawful so to do. If, however, it be possible to effect self-defence without slaying the person, it is not lawful to slay him. It is written in the *Jámá-i-Sugheer*, that if a person draw a weapon upon another, during either night or day, or lift a staff against another in the night in a city, or in the day-time in the highway out of the city, and the person so threatened kill him who thus draws the weapon, or lifts the staff, nothing is incurred; because, as striking with a weapon affords no room for delay or deliberation, it is, in this case, necessary to kill the person in order to repel him; and although, in the case of a small staff there be more room for deliberation, yet in the night-time assistance cannot be obtained; and hence the person threatened is in a manner forced, in repelling the other's attack, to kill him; and so likewise where the attack is made during the day-time in the highway, as there assistance cannot readily be obtained. When therefore a person thus slays another, the blood of the slain is of no account. Moreover the learned have declared a large staff which the body cannot resist, and which kills instantaneously, is the same, in effect, with a weapon, according to the opinion of the two disciples."

The following authority for justification of homicide, in defence of another threatened by a drawn sword, (or other mortal weapon) is quoted from the *Tubi'en* in the *F. Aálumgeeree*. "If a person draw a sword upon a Mosulman, it is lawful to put him to death, and it is the same whether he be killed by the person upon whom the weapon is drawn, or by another in his defence; nor is there any difference in this case, whether it be day or night; and within or out of a city." It is added from the *Kafee*, that, "if a person lift a staff to strike another by night in a city, or by day without a city, and the person so lifting a staff be killed, no responsibility attaches to the slayer. But if the person lifting a staff against another, by day and within a city, be wilfully killed, the slayer is liable to be put to death in retaliation, according to Aboo Huneeifah; though not according to his two disciples."

\* Trans. of *Hid.* vol. 4, p. 292. The opinion of Aboo Yoosuf (that in the case stated, the lunatic and infant having, by their aggression, forfeited their right of legal protection) is omitted in the translation.

† Trans. of *Hid.* vol. 4, p. 293. It is added, from the Persian version, "for if he knew that upon his calling out the thief would relinquish the goods; and he notwithstanding neglect calling out and slay him; retaliation is incurred; since he, in this case, slays the person unjustly." This is not in the Arabic original; and an argument is omitted that the owner of the house was justifiable in killing the thief from the beginning. The inference in the Persian version has however the authority of one of the commentaries on the *Hidayah* (the *Aýnee*, as quoted in the *F. A.*) and another (the *Kiftayah*) states responsibility (*ẓumánut*) to be incurred; but without specifying *kisás*, or *diyyat*.

## MOHUMMUDAN CRIMINAL LAW.

down the property, the killing him is not lawful." And it is more fully quoted from the *Moheet* in the *Futáwá-i-Aálumgeeree*, that "if the thief, on being called to, run away, and throw down the property, it is not lawful to kill him." The three following cases are also cited in the *Humádeeyah*. 1. If the owner of a house see a thief breaking into it, he may kill the thief, or throw a stone, or shoot an arrow at him. It is not requisite to warn him first, according to Aboo'Huneefah: though Aboo Yoosuf says, that warning should be first given to the thief, and if he do not then run away, he may be shot.<sup>1</sup> 2. But if a thief enter your house, and you apprehend he may be armed and will attack you, in this case you may shoot him; and it is not requisite to warn him.<sup>2</sup> 3. Aboo Yoosuf further says, that if an unarmed thief enter a house, and if the owner, though strong enough to seize him, apprehend that he would run away and escape with some of the effects; it is lawful, in such case, to strike and kill the thief. The last case is likewise stated *verbatim* in the *Moontuka*, and the second with the following variation: "A man enters the house of another, and attempts to take away his property. The owner may kill him, provided he is not able to seize him."<sup>3</sup> It is the same if the thief have taken property; and the owner, though strong enough to seize him, fear that the thief would shoot, or otherwise kill him." Another case is stated in the *Humádeeyah*, and is likewise quoted in the *Futáwá-i-Aálumgeeree*, to this effect:—"A thief raises his head above a wall, on which the owner had placed some cloth, and he fears that on calling out the thief would steal the cloth and escape. In this case, the owner may shoot at and kill the thief; provided, according to the opinion of some lawyers, the value of the cloth be ten *dirms*<sup>4</sup> or more; but Aboo'l Lys, on the authority of the tradition from the prophet (above quoted) holds it lawful to shoot at the

<sup>1</sup> Imám Mohummud appears to have been of the same opinion with Aboo Yoosuf, by a similar case quoted in the *F. A.* from the *Nuwádir of Ibn-i Sumá'ah*: though the slayer of a thief, in the predicament specified, without warning him, is declared liable to the fine of blood only. In a further quotation of the same case from the *Zukheerah*, supposing the thief to be killed by a stone, the fine of blood is stated to be payable by the *áakilah* (hereafter explained) and expiation only to be due from the slayer. But this has reference to the opinion of Aboo'Huneefah, that homicide by a stone is manslaughter. In a case before the nizamat adawlut, on the 1st May, 1805, (see case of *Neemae*, 29, 1805, in the printed reports of trials before that court) the prisoner was acquitted, on a confession of having killed the deceased, when standing behind the wall of the prisoner's house, "supposing him to be a robber."

<sup>2</sup> A similar case is quoted from the *Moheet*, in the *Humádeeyah*, and was also cited from the *Buhr-i-rayik*, in a *Futwá* delivered by the law officers of the nizamat adawlut in 1799, relative to punishment upon presumptive evidence; viz. that if a man enter the house of another with a drawn sword, and the owner of the house apprehend an intention against his life, he is justified in putting the stranger to death, on the presumption that it is necessary for his own security. But this case may be considered more applicable to the preceding head, of justifiable homicide in self defence.

<sup>3</sup> This case is also cited in the *Futáwá-i-Aálumgeeree* from the *Moheet* of Surukhsee: with an addition "that the thief may be killed, whether he shall have attacked the owner or not." And the same case is stated, in the *Yuabee-a*; with the authority of Husum, in his *Mojurrid*, that "it is lawful for the owner of a house to kill a man, who enters it with an intention of theft."

<sup>4</sup> This value is requisite for the penalty of *Hudd* in cases of robbery. Mr. Hamilton calculates the *dirm*, or tenth part of a *deenar*, to be from eight to nine pence; by which valuation ten *dirms* are about seven shillings. Vide note in Translation of *H.* vol 2, p. 85. The opinion of Aboo'l Lys is however adopted in the *Fut'hool Kudeer*, and other books of authority, which expressly declare that a man may kill in defence of his property, although it be less than the legal standard for *Hudd*; and another tradition from the prophet is cited—that "whoever is killed in defending his property obtains martyrdom."

thief, unconditionally." The author of the *Mooltukut* states, that "If a man, on a plain, attempt to take the property of another, it is lawful to kill the robber, provided the property be ten *dirms*, or more, in value;" and adds, "it is the same with respect to a man breaking into a house, if killed by the owner." In the *Moontuka*, cited by the author of the *Moheet*, and quoted in the *Futawá-i-Aálumgeeree*, the right of preserving property is further stated to justify a man's killing another, who may attempt to take away from him, by force, a piece of bread, or some drinking water, provided the owner of the bread, or water, shall be apprehensive of hunger or thirst to himself. And the author of the *Koonyah* declares that no penalty is incurred for killing a person who attempts by violence to take a piece of cloth belonging to another. But these must be considered extreme cases; and to require, as in other instances, a real or presumed necessity, to render the homicide justifiable.

8. In prevention of adultery, rape, or other offences, of a heinous nature, being chiefly such as, by the Mohummudan law, are punishable with death. The authors of the Persian version of the *Hidáyah*, in their introduction to the chapter of *Tázee*, have quoted from the *Niháyah* (one of the commentaries on the *Hidáyah*) the answer of Aboo Jáfur, of *Hoondwán* (a ward of the city of *Bulkh*) to a question put to him, whether a person finding a man in the act of adultery with his wife, might slay him? The answer given in the Persian version<sup>1</sup> is, "If he know that the man will desist from the act of adultery, on calling out, or beating him with something not a mortal weapon, the man must not be slain. But if he believe that death alone will restrain the man from the commission of the adulterous act, it is lawful to kill him; and the woman also, if she be consenting to the adultery." It is added from the *Moontuka*,<sup>2</sup> in proof that *Tázee*, or chastisement, in such cases, may be inflicted without an order from the magistrate, that it is founded on the principle of removing evil with the hand; which is authorized by an injunction from the prophet to this effect. "Whoever among you see evil, it is incumbent upon you to prevent it with your own hands; or if you are unable to do this, you must forbid it with your tongues." In the *Buhr-i-ráyik*, the interrogatory to, and answer of Aboo Jáfur, are quoted from the *Tubi-reen*, in more general terms, as applied indefinitely to any man and woman seen in the act of whoredom; instead of being restricted to a man's finding his own wife in the act of adultery. It is added from the *Moonyah*, that "a person seeing a man in the act of whoredom with his wife, or other female connection, and the latter assenting thereto, may kill them both." Upon which, and the preceding case (as cited from the *Tubi-reen*) the author of the *Buhr-i-ráyik* observes, "a distinction is therefore made between a strange woman, and a wife or other connexion. In the case of a stranger it is not lawful to kill without calling out, or beating with something not a mortal weapon. But if the woman be a connection, it is lawful to kill without this condition." It is further stated in the *Buhr-i-ráyik*, from the *Moostubá*, as a general principle, "that whoever sees a *Mooslim* in the act of committing whoredom, may kill him; and need not refrain, except from fear that his plea, of the person slain having been in the act of whoredom, may not be admitted; and that he may consequently become liable to *Kisás*." But to reconcile this with the remark quoted upon the former case, the condition of

In prevention  
of adultery,  
rape, or other  
heinous of-  
fences.

<sup>1</sup> There are some inaccuracies in the English translation, vol. 2, p. 77, particularly as to the object of prevention, which, by an erroneous interpretation of the words "*Báz khádú máud*," is made to be "a repetition of the offence," instead of desistance from the full commission of the actual offence.

<sup>2</sup> Misnamed the *Moontaffee*, in translation of *Hidáyah*, vol. 2, p. 77.

previously calling out, or beating, must be understood, if the woman be not the wife or other connection of the slayer. It is also stated in the *Futūwā* of Kázee Khán, that "if a person see a man of legal responsibility in the act of adultery with his wife, or with the wife of another, and, on calling out, the adulterer shall not run away, or desist, he may be killed and *Kisás* is not incurred." But this may be likewise reconciled with the distinction noticed in the *Buhr-i-ráyik*, by considering the general rule to be stated by Kázee Khán, as well as by Aboo Jâfur, for cases of justifiable homicide, in prevention of whoredom, indiscriminately; and a further special rule to be given in the *Mooneyah*, whereby the condition of previously calling out, or beating, is dispensed with, when a person may find his own wife, or other near connection, in the act of adultery. It is more probable however that the different cases cited have their origin in a difference of opinion between Aboo Huneefeh and his disciples.\* At all events the rule which applies to a wife is declared in the *Humádeeyah* to be equally applicable to a female slave. It is further stated in the *Moontuka*, that "if a person, on entering his house, find a dissolute man with his wife, and be not able to seize the man, from fear of being overpowered, he is justified in slaying the libertine." The same case is given in the *Syrufeyah* with an extension of it to a female slave, as well a wife, and without the condition of inability to seize the man; though this may be implied. In the *Mooltukut* it is declared, that "if any one see a man about to commit a rape upon a free woman or a slave, the ravisher may be killed." And it is added, that "if a person find a man with his wife, or female slave, in the same situation, and the wife, or slave, be assenting to the whoredom, both parties may be slain." The same case is cited in the *Zukeerah*, with the following variation. "If a person see a man using force to commit a rape upon a free woman, or a slave; and fear that he will accomplish his purpose, if not put to death; the killing him is justifiable. If the woman be assenting, the same principle is applicable to her."† The justification of homicide by the party on whom a rape, or the crime against nature, is attempted, is expressly stated in the *Nukshbundeeyah* and the *Humádeeyah*, as follows. "A man uses force to commit a rape upon a woman, or sodomy upon a boy, (*umrud*, *lit.* a beardless youth,) who is unable to resist and prevent him, except by killing him. The homicide in

\* In a treatise upon *Tázeer*, written by Moúlavee Siráj-ool-Huk, after quoting the answer of Aboo Jâfur, in which a previous caution is required, he remarks, "this is taken from the doctrine of Imám Mohummud; who directs a previous consideration of the necessity of killing." Moúlavee Mohummud Ráshid, who has also written a dissertation upon *Tázeer*, observes likewise that, on examining different books, he has found a variation in the authorities for justifiable homicide; "thus, according to Aboo Huneefeh, it is lawful to kill, without any previous warning, persons seen in the act of whoredom; or about to commit whoredom, either with a near connection, or a female slave; as well as thieves in the act of stealing property, or breaking into a house; whereas, according to Aboo Yoosuf, a previous warning to the thief is necessary in the latter case; and according to Imám Mohummud, in cases of whoredom, or intention to commit whoredom, it is a condition to justify the homicide, that there be no other means of prevention."

† The cases quoted from the *Moontuka*, *Syrufeyah*, *Mooltukut*, and *Zukeerah*, are cited by Moúlavee Siráj-ool-Huk, in his treatise on *Tázeer*, and he remarks upon them, that they show, "a person attempting to commit a rape, may be killed though he have not actually committed it; and whether the woman be a wife, or other connection of the slayer, or not. Also that a person seeing a man about to commit whoredom with his wife, or other near connection, when no force is used, may put both parties to death." This construction is admitted by the other law officers of the *nizamut adawlut*. See also printed reports of cases adjudged by that court, *Trials* 83, 1805; 25, 1806; 15, 1807; 19, 1807.

this case is justifiable." The following extraordinary case is also stated in the *Humádeeyah*, as well as in the *Syruseeyah*. "A woman thrice divorced from her husband, but without witnesses to prove it before the *Kázee*, if unable to resist and prevent her late husband's cohabitation with her, may kill him at the time of his attempting to ravish her. Abdoollah reports from Aboo Huneefah, that if the woman be actuated by a desire to avoid sin, and by the fear of God, it is lawful for her to repel the outrage offered to her by killing her late husband. But some of the learned have said that although it is lawful, in this case, for the woman to kill her late husband, with a knife or other weapon; as her plea may not be credited, and *Kisés* may be demanded against her, she ought to kill him with poison; thus secretly occasioning his death, as he has secretly attempted an unlawful act against her."<sup>1</sup>

9. The killing another at his express desire, or command. This was declared to be justifiable in a *Putwa* delivered by the law officers of the nizamat adawlut in the year 1798,<sup>2</sup> and it was added, in illustration, that the instruction to kill proves the right of retaliation to have been remitted. There are however three opinions upon the case. One, that the permission to kill does not legally sanction the homicide, and that it consequently subjects the slayer to *Kisés*. Another, that the permission of the deceased affords a doubt, or plea; which bars retaliation of death, but does not exempt the slayer from the fine of blood, to which he is liable for wilful homicide when *Kisés* is barred. The third, as first stated; and which appears to be the prevalent doctrine; that the deceased having power to dispose of his own life, as of other personal and proprietary rights, and having authorized the slayer to take it away, he cannot be made accountable for the act.<sup>3</sup> It may be further remarked, in this place, that suicide does not incur any forfeiture, or other penalty, under the temporal law of *Islám*, though it is held to be sinful, and punishable in a future state.<sup>4</sup>

The killing a person at his desire, or command.

10. Homicide by compulsion, (*Ikráh*) under menaces which induce a fear of death, is not strictly justifiable under the Mohummudan law; but the penalty of *Kisés*, according to the opinion of Aboo Huneefah, and Mohummud, is transferred to the compeller; and the compelled person is considered rather as the instrument than author of the homicide; yet not altogether free from criminality, as the act is unlawful; and subject to discretionary punishment, if the circumstances of the case appear to require it.<sup>5</sup> Aboo Yoosuf concurs in exempting the slayer, under compulsion, from retaliation of

Homicide by compulsion, under menace which induce fear of death.

<sup>1</sup> To understand the full extent of the illegality alluded to in this case, it must be remembered that a man, after pronouncing three divorces upon his wife, is restricted by the Mohummudan law from taking her again, until she have been married to another person; and that this restriction is founded upon an express prohibition in the *Korán*, supposed to be of divine authority.—V. translation of *Hidáyah*, vol. 1, p. 301:

<sup>2</sup> It was given on the 15th October, 1798, in answer to a reference made by the court, for the purpose of ascertaining in what instances of wilful homicide a sentence of death is barred by the provisions of the Mohummudan law. The purport of the *Putwa*, received in answer, is more fully stated in the preamble to Regulation 8, 1799. See also Trials 1, 1805; and 14 and 15, 1810, in the printed reports of cases adjudged by the nizamat adawlut.

<sup>3</sup> The three opinions are cited in the *Mujmá-ool-buhrín*, with an observation that the whole are ascribed, by different reports, to the three *Imáms*, (viz. Aboo Huneefah, and his two disciples;) and that Zoofur preferred the first, whereby wilful homicide, under permission, is declared illegal and subject to *Kisés*.

<sup>4</sup> See Translation of *Hidáyah*, vol. 4, p. 290.

<sup>5</sup> In the case of a prisoner, who confessed having killed a person by order of his master, under fear of immediate death, he was acquitted by the law officers of the court of circuit, and nizamat adawlut. See printed Trials, case of *Retra*, 5, 1806.



death; but extends the same exemption to the compeller, on the existence of a doubt, sufficient to bar *Kisās*, from his not being the actual slayer. Whilst Zoofur and Shāfi'ee contend that the compelled person is liable to the penalty of murder, as being the immediate cause of a criminal homicide, and Shāfi'ee further maintains that the compeller, as being the primary cause, is subject to the same penalty.<sup>1</sup> The principle of justification established by Abou Huneefah and Imām Mohummud is applicable, *a fortiori*, to every case of physical compulsion, and necessity; in which the homicide may be altogether involuntary on the part of the person, who is forcibly made the instrument of committing it.<sup>2</sup> But no illegal act can be justified under the Mohummudan law by the mere command, or influence, unaccompanied with force or menaces, of a parent, husband, or master; or of any other person whatever. Neither is the justification of homicide in support of the law, and of legal process, in all cases, expressly provided for; though it cannot be doubted that in cases of resistance to such process, any acts unavoidably done in the execution of public duty might be justified; and that the principles of justification which have been stated, in cases of a private nature, would be applicable, with additional force, in all matters connected with the execution or advancement of public justice.

Further general cases, in which homicide is declared to be justifiable if requisite for the prevention of evil, and safety of the community. Province of the magistrate to enforce the law in such cases. The magistrate only being authorized to punish the offender after the completion of the offence.

Besides the specific instances of justifiable homicide, which have been noticed, the provisions of the Mohummudan law for discretionary punishment recognize the general legality of putting to death, if requisite for the prevention of evil, and safety of the community, all violent disturbers of the peace; highway robbers; extortioners under pretext of the public taxes; false informers and accusers before tyrants for purposes of oppression; and generally all habitual ill doers, who make a practice of committing offences injurious to society.<sup>3</sup> But though it is declared that "the killing such is meritorious; and that God will reward the slayers of them," it appears to be rather the province of the magistrate, than of individuals, to enforce the law, according to the ascertained degree of criminality, in such cases; except in defence of private rights, or to prevent an atrocious crime at the time of the attempt to commit it: for it is expressly declared, as a general rule and principle, that "every Mosulman may inflict *Tāzeer* upon a criminal, in the act of committing a crime; but after the completion of the offence the magistrate only is authorized to punish the offender."<sup>4</sup>

<sup>1</sup> See the different opinions more fully stated in translation of *Hidāyah*, vol. 3, p. 406. The following case is cited in the *Sirāj-ee-yah*, *Zukheerah*, and *Humādeeyah*. "If the *Sooltan* compel a person to kill a Mosulman unjustly, by threatening death upon non-compliance, the *Sooltan* is liable to *Kisās* and the compelled person to *Tāzeer*, according to Abou Huneefah and Imām Mohummud."

<sup>2</sup> A part of the argument of Abou Huneefah and Imām Mohummud, in which the compelled person is stated to be considered as an instrument, like a weapon, "or as if he had been thrown by the compeller on the deceased, and had thereby occasioned his death," is imperfectly translated by Mr. Hamilton, vol. 3, p. 463.

<sup>3</sup> *Nuhr-i-fayik*, *Tumurtashee*, and *Sirāj-ee-yah*, quoted in the *Futūwā-i Aalungeeree*. Other authorities are also quoted in the *Humādeeyah*, with a tradition from the prophet, which is construed to justify the killing any general oppressor, or evil doer, whose depravity infests mankind, like a snake, scorpion, or other noxious animal. But the author of the *Buhr-i-rāyik* intimates that in such cases, though every Mosulman, seeing the offender in the act of committing the offence, is at liberty to put him to death; he may be restrained by the apprehension that his plea will not be credited, and that he will consequently be liable to retaliation.

<sup>4</sup> *Buhr-i-rāyik*, quoted in the *F. Aalungeeree*. It is added in illustration from the *Kooniyah*, that "if a person see another commit an offence, which incurs *Tāzeer*, and subsequently to the commission of it inflict *Tāzeer* upon the offender, without authority from the magistrate, the person so inflicting *Tāzeer* is liable to punishment at the discretion of the magistrate."

· Illegal and penal homicide, to which alone the Mohummudan law refers in its definition of offences, under the designation of *Jináyát*, is of five descriptions. Five descriptions of illegal homicide.

1. *Kutl-i-úmd* ; literally, wilful homicide ; but implying a murderous will, evinced by a voluntary act, and by the use of a mortal instrument ; or something likely to occasion death.

2. *Shibah-i-úmd* ; or wilful-like, viz. resembling the former in the voluntariness of the act ; but differing from it by the use of an instrument not considered to endanger life ; and therefore not evincing a murderous intention.

3. *Kutl-i-khutá* ; or erroneous homicide ; viz. by an erroneous act, or by error in the intention.

4. *Kutl-i-káem mokám-ikhutá*, also called *Járee Mujrá-i khutá* ; involuntary homicide, of the same nature as the preceding ; but differing from the act being involuntary, instead of erroneous.

5. *Kutl-ba subub* ; or accidental homicide by an intervenient cause.

*Kutl-i-úmd*, or murder, is defined in the *Hidáyah*, to be “ homicide committed by a responsible person ;<sup>1</sup> wilfully striking another person, with a mortal weapon,<sup>2</sup> or something that serves for such, as a sharp piece of wood, a sharp stone, or fire.” It is added, in explanation, that “ *úmd* means intentional ; but the intention, being concealed in the mind, can be discovered only by something affording proof of it ; and as the use of a common instrument of homicide does afford such proof, when the slayer of a man uses an instrument of that description, it proves his intention to kill.”<sup>3</sup> Nearly the same definition is quoted in the *Futáwá-i Aálumgeeree* from the *Káfí*, with the addition of “ capacity to sever the limbs,” in describing the substitute for a weapon ; but without the explanatory remark given by the author of the *Hidáyah*. Definition of *Kutl-i-úmd*, or murder.

With respect to *Shibah-i-úmd*, which, though not with technical exactness, may, to distinguish it from the crime of murder, be denominated manslaughter, there is a difference of opinion between Aboo Huneefah and his two disciples. The former defines it to be “ homicide from a responsible person striking wilfully with something which is not a mortal weapon, nor a substitute for such.” Aboo Yoosuf and Imám Mohummud (as well as Shafi’íee) maintain that if the stroke be given with a large stone, or a large piece of wood, it is *Kutl-i-úmd* ; and they define *Shibah-i-úmd* to be “ homicide from striking wilfully with an instrument which is not likely to kill ; such as a small stick ;” adding, as the ground of their opinion, that “ in this case evidence of the intention to kill is wanting : the instrument used not being an instrument of death, it may be presumed that the design was not death, but correction or something else, which reduces the offence to manslaughter. But evidence of an intention to kill is not wanting when an instrument, which must occasion death, is used. In such cases therefore it is murder.” In answer to this reasoning, Aboo Huneefah argues “ that Shibah-i-úmd, or manslaughter.

<sup>1</sup> The original term, *Mokulluf*, includes all persons accountable to the law for their actions ; and refers particularly to the sane and adult, who alone are subject to the legal penalties of *Hudd* and *Kisás*. See the book of *Hujr* or inhibition, in *Hid.* and *F. A.*

<sup>2</sup> *Siláh* ; lit. arms. As here used it appears to mean any instrument of death ; though its more strict interpretation is applied to edged weapons, or such as are capable of destroying life by dismemberment.

<sup>3</sup> It may be remarked, in this place, that the Mohummudan law makes no allowance for sudden homicide from provocation, when the intent to kill is evident ; except in cases of self-defence, or other ground of justification. See printed reports of cases adjudged by the nizamat adawlut, Trial 1, 1806 ; also Trial 65, 1805.

the instruments specified (viz. a large stone, or large piece of wood) are not appropriated, nor commonly used, for the purpose of killing. Proof of an intent to kill therefore is wanting, when such instruments are used, and homicide committed with them is manslaughter only, as with a whip or small stick; which the prophet has declared to be *Shibah-i-úmd* only, and punishable by a fine of one hundred camels.<sup>1</sup>

*Kutl-i-khutá*,  
or erroneous  
homicide.

The error which distinguishes *Kutl-i-Khutá*, or erroneous homicide, is either in the act, or in the intention. In the former, as when an arrow is shot at a mark, and hits a man. In the latter, as when a man is mistaken for an animal of game, and shot at as such; or when a Mosulman is shot, under a supposition of his being a hostile infidel, whom it is lawful to kill. These examples are stated in the *Hidayah*; and the latter is more fully illustrated by a quotation in the *Futúwá-i-Aálumgeeree*, from a commentary on the *Jámá-i-Sugheer*, to the following effect:—"If a Mosulman army engage an army of infidels: and they mix together: and a Mosulman kill another Mosulman, supposing him to be an infidel: the slayer is not liable to retaliation: nor is the fine of blood due, if the Mosulman killed were assisting the infidels." It is added, from the *Moontuká* as reported by Imám Mohummud, that although a stroke aimed at one member, and falling on another member of the same person, be not sufficient, if death ensue, to take the case out of the predicament of wilful homicide; yet it would be *Kutl-i-khutá* only, if the blow were aimed at one person, and undesignedly struck another. The author of the *Hidayah* also states the penalty of murder to be incurred, if the blow aimed at one part of the body strike another part and occasion death: as all the parts of the same body compose one person. But if an arrow, shot at one person, pass through him, and hit another, and they both die: it is stated to be murder with respect to the person aimed at, and first struck, only: it being erroneous homicide, with respect to the second person, in the same manner as when an arrow is shot at a deer and inadvertently hits a man.<sup>2</sup>

*Kutl-i-kásem*  
*Mokám-i-khutá*,  
or involun-  
tary homicide  
by an involun-  
tary act.

The example given in the *Hidayah*, of *Kutl-i-kásem mokám-i-khutá*, or involuntary homicide by an involuntary act, is a sleeping person's falling on another and killing him by the fall. The same instance, with the variation of rolling, instead of falling, is quoted in the *Futúwá-i-Aálumgeeree* from the *Káfee*. And three further examples are cited in the same work from the *Moheet*.

1. A person's falling from the roof of a house and killing another thereby.
2. Death occasioned by the accidental fall of a brick, or piece of wood, from the head of a person.

<sup>1</sup> See the *Hudees* referred to by Aboo Huneefah, with the whole of what is quoted on the different opinions respecting *Shibah-i-úmd*, in the *Hidayah*. The same in substance is quoted from the *Moosmurá*, in the *F. Aálumgeeree*, with a remark that the doctrine of Aboo Huneefah is the most correct. Without determining this point, it may be observed, that all the opinions appear to agree in considering an intention to kill the essential ground of distinction between *Kutl-i-úmd* and *Shibah-i-úmd*. The disagreement between them respects the instruments to be admitted as sufficient evidence of the intent to kill.

<sup>2</sup> See trans. of *Hid.* vol. 4. p. 307. In a *Futwá* delivered by the law officers of the nizamat adawlut, in the year 1801, not only the shooting at one man and undesignedly killing another, but even killing the person intended, if any accident intervene, such as the arrow, or other instrument, passing by the person aimed at, and killing him on a rebound, was declared to be *Kutl-i-khutá*. V. Preamble to Reg. 8, 1801. See another case of erroneous homicide, by throwing a piece of burnt brick at a person, which struck and killed another. Printed Trials before nizamat adawlut. Case of *Lutwa*, 64, 1805.

3. A horse trampling a person to death, without the rider's designing it, or being able to prevent it.

Accidental homicide by an intervenient cause (*Kutl-ba-subub*) is stated in the *Hidāyah* to occur when a person digs a well, or sets up a stone, in ground not belonging to him; and another is killed by falling into the well, or over the stone. In the *Mooxmurāt*, as quoted in the *Futawā-i-Aālumgeeree*, the accidental trampling of a man to death, by a led or driven quadruped, is also mentioned as an example of this description of homicide, and many other instances are given in both works, under the head of *structures upon the highway*; which, if they occasion homicide, incur the same responsibility, as if constructed on private property without the owner's permission.

*Kutl-ba-subub*, or accidental homicide by an intervenient cause.

Series of cases ruled to be murder, manslaughter, or other homicide.

Wilful homicide with a sword, or other edged weapon or sharp instrument, or with fire.

Responsibility for homicide incurred if the wounded person continue disabled, and bed-ridden, till death. In what cases homicide by a hoe, is murder, or manslaughter.

Homicide by a needle, or similar instrument, in what cases wilful.

The foregoing will be sufficient to explain the third, fourth, and fifth, species of homicide, when there may be no particular circumstances to occasion a minute distinction between them, and either murder, or manslaughter. But it will be useful to notice a series of cases which appear, from the *Hidāyah*, or *Futawā-i-Aālumgeeree*, to have been ruled wilful homicide, incurring retaliation of death; or not wilful, and therefore subject only to the penalties of manslaughter, or other involuntary homicide.

1. If the homicide be perpetrated with a sword, or any other edged weapon; such as is commonly used to take away life; or with any sharp instrument, calculated to produce the same effect, as a sharp piece of wood, a sharp stone, and the bark of cane; or with fire, which is equally capable of separating the members of the body and occasioning death; it is universally agreed to be wilful, as already quoted from the *Hidāyah* and *Futawā-i-Aālumgeeree*.

2. It is further stated, as a general principle, in the *Hidāyah*, that if a person wound another, so as to disable him, and render him constantly bed-ridden until death; responsibility for the homicide is incurred by the person who inflicted the wound, to which the death is referred.

3. If a person be killed by a stroke given with the iron edge of an hoe (*Kulund*) the homicide is generally agreed to be murder (*Kutl-i-ūmd*). It is also agreed to be manslaughter (*Shubah-i-ūmd*), if the wooden handle only were used. But if the blow were struck with the iron back of the instrument, according to Abou Huneefah, it is manslaughter; whereas in the opinion of Abou Yousuf and Imām Mohummud, it is equally wilful homicide, whether occasioned by the iron back of an hoe, or by the edge of it.

4. If death be effected by pricking with a packing needle (*misullah*) it is wilful homicide; but not according to the best authorities, if a small needle, or any similar instrument, be used, and it happen to kill the person pricked with it. Some are of opinion, however, that the slayer is liable to the penalty

<sup>1</sup> These will be subsequently stated. But to render some of the examples more intelligible, it may be proper to note, in this place, that a compensation for bloodshed (denominated *Ahl* as well as *Diyat*) payable by the *Aākilah*, or persons responsible, with the slayer, for the payment of this fine, is one of the legal penalties for every description of unlawful homicide except murder. It may also become payable, in commutation for *Kisās*, in cases of wilful homicide, but it is then exclusively due from the offender himself; as it likewise is in every case of composition for murder.

<sup>2</sup> The author of the *Hidāyah* remarks that there is one report of Abou Huneefah's having concurred in the opinion of his two disciples: But that another, and more authentic report, states his opinion to have been against the penalty of wilful homicide, unless a wound were inflicted. Mr. Hamilton, has translated *Kulund*, in the case cited, *spade* or *shovel*; and the principle seems equally applicable to these instruments; but the recital corresponds more exactly with a hoe, which is also of more common use in India, and is understood to be the instrument referred to. It is added in the *Hidāyah* (but omitted in the translation) that the same difference of opinion is reported to have been entertained by Abou Huneefah, with respect to homicide occasioned either by the wooden scale, or by the iron part of a balance.

of murder, if the instrument, though small, be applied to a part where it is likely to take away life.<sup>1</sup>

Case of homicide by biting.

5. If a person kill another by biting him, it is recorded in the *Ajnás*, that retaliation for wilful homicide is not incurred; as *Kisás* attaches only to acts done with an instrument which might be used for cutting the throat in consecration of animals (*Zubh*), which the teeth are not.<sup>2</sup>

Or by successive blows with a whip, or stick. Wilful homicide by throwing a person into a heated oven.

6. If a person be killed by successive blows with a whip, or stick, retaliation for murder is not due, according to the opinion of Abou Huneefah.<sup>3</sup>

7. It is recorded by Imám Mohummud, in the *Jámá-i-Sugheer*, that *Kisás*, for wilful homicide, is incurred by throwing a person into a heated oven, and thereby occasioning his death, whether fire be in the oven at the time, or not; and although the person may not die immediately, if he continue bed-ridden, and unable to walk till his demise.<sup>4</sup>

Or by putting him into a vessel of boiling water.

8. If a person, bound hand and foot, be put into a caldron, or other vessel of boiling water, sufficiently hot to produce blisters on the body; and die in consequence, either immediately or within a few days; retaliation of murder is due; but not if the person be able to walk about before his death.<sup>5</sup>

Cases of manslaughter by exposure to cold.

9. If a person be thrown into cold water, in the winter season, so that his limbs be contracted, and he die in consequence; or if he be stripped naked and exposed to the winter cold upon the roof of a house, so as to occasion his death; or if he be bound hand and foot and kept in snow till he expire; the fine of blood is due for manslaughter.<sup>6</sup>

Or to the sun.

10. In like manner the fine of blood for manslaughter is incurred, if an adult person, or child, be bound hand and foot, and exposed to the sun, without means of escape, till death ensue.<sup>7</sup>

Cases of homicide by drowning.

11. If a person immerse an infant or an adult, into water from which there is no prospect of his escape by swimming; as for instance, into the sea; he is not liable to retaliation for wilful homicide, according to Abou Huneefah; (as no wounding instrument is used;) but the two disciples and Sháfí'ee maintain that he is. All agree however that it is manslaughter only, if there be not water enough to endanger life without swimming; or if the person thrown into the water be capable of swimming, and his arms and legs be not bound, nor a weight tied to the body, and the place be such that he may escape by swimming.<sup>8</sup>

<sup>1</sup> *Khuzánut ool Moofiteen*, quoted, in *F. A.*

<sup>2</sup> *Kholásut-ool Futáwa* quoted in *F. A.* The reason assigned however appears applicable only to the doctrine of Abou Huneefah; and not even to this, in every case; as homicide by fire is admitted by him to be wilful. Abou Yoosuf and Imám Mohummud consider it wilful, if the instrument be likely to kill, whether sharp or not.

<sup>3</sup> *Kholásut-ool Futáwa* and comment on the *Mubsoot* quoted in *F. A.* Kázee Najm oo deen, in his translation of this part of the *Futáwa-i-Adhumeereee*, remarks, that according to the opinion of Abou Yoosuf, Imám Mohummud, and Sháfí'ee, homicide by successive blows of a whip, or stick, incurs *kisás*. This is confirmed by the Futwá of the law officers of the nizamat adawlut, in the case of *Umrao*. See printed Reports of Criminal Trials, 74, 1805.

<sup>4</sup> *Moheet* and *Kázee Khán*, quoted in *F. A.*

<sup>5</sup> *Zuheereeyah*, quoted in *F. A.*

<sup>6</sup> *Zuheereeyah*, quoted in *F. A.* It is not specified whether Abou Yoosuf and Imám Mohummud consider these instances to be murder or manslaughter. But from analogy to other cases, in which they differ from Abou Huneefah, it may be inferred that they do not concur in the opinion stated.

<sup>7</sup> *Khuzánut ool Moofiteen*, quoted in *F. A.* The same remark is applicable in this, as in the last instance, on the probable difference of opinion between Abou Huneefah and his disciples.

<sup>8</sup> *Hid.* and commentary on the *Zeeádát*, quoted from the *Moheet* in *F. A.* See the arguments of Abou Huneefah and his two disciples, in support of their respective opinions. *Trans of Hid.* Vol. 4, p. 289. One reason ascribed to the former, viz.

12. The same difference of opinion exists between Aboo Huneefah and his disciples, if the person were drowned from being repeatedly immersed in water, till he died. <sup>1</sup>

Case of repeated immersion in water.

13. If a person skilled in swimming be thrown from a boat into a river, or other confined piece of water, and sink at once without swimming, Aboo Huneefah, considers the fine of blood for manslaughter to be due; but has declared neither retaliation of death, or the fine of blood, to be incurred, if the person so thrown remain above water, and swim before he is drowned, although he should have swam to save himself till he became exhausted. Nor is any thing due for throwing a person into water, if it be uncertain whether he is drowned or not, until it be ascertained that he is dead. It is the same if the person sink two or three times, and appear above water again, if he be alive when last seen; and his condition afterwards be doubtful. <sup>2</sup>

Further case of persons thrown into water.

14. If a person be thrown from the roof of a house, or from the top of a hill, or into a well, and be killed thereby; according to Aboo Huneefah, it is manslaughter; and his two disciples concur with him if there be probable means of escape; but if there be no probability of saving life in such cases, they deem it wilful homicide. <sup>3</sup>

Or from the roof of a house or top of a hill or into a well

15. A person strangling another is not liable to suffer death, according to the doctrine of Aboo Huneefah, (though he is in the opinion of the two disciples) unless he be notorious for having repeatedly committed this offence; in which case, if he have not shown signs of repentance before he is apprehended, he should be punished with death as an example. <sup>4</sup>

Homicide by strangling.

16. If a person give poison to another and death ensue, there are three cases. 1. When the giver forcibly, and with his own hand, puts the poison into the mouth of the deceased. 2. When he may have put the poison into the hand of the deceased, and compelled him to drink it. 3. When he may have given the poison into the hand of the deceased, and used no compulsion to make him drink it. Retaliation of murder is not incurred in any of these cases. In the first and second, the fine of blood is due from the *Aâkilah*. In the third no penalty is incurred, whether the person, who drank the poison without compulsion, was aware of its being poison or not. <sup>5</sup>

Cases of homicide by poison

“that homicide by drowning being of rare occurrence, the deterring from it (by capital punishment) is of less consequence than with respect to prevalent offences,” is omitted in the translation. It is scarcely necessary to add that the whole of Aboo Huneefah’s reasoning in this, as in several other cases, appears unsatisfactory and futile.

<sup>1</sup> *Zuhceereyah*, quoted in *F. A.*

<sup>2</sup> *Zuhceereyah*, quoted in *F. A.* The separate opinions of Aboo Huneefah and his disciples are not stated; but the principles, upon which they differ in the preceding cases, appear equally applicable to this.

<sup>3</sup> *Moheet*, quoted in *F. A.*

<sup>4</sup> On the principle of *Seâsut*, or discretionary punishment for the purpose of determent. The case stated is taken from the *Kâfee* as quoted in the *F. A.* It is confirmed by a case which terminates the book of *larceny* in the *Hidyyah*; but from the ambiguous meaning of the word *Khufah* in the Persian version, has been erroneously translated by Mr. Hamilton, as a case of *homicide on provocation*. The Arabic original has the explicit term *Hunuk*; and the literal sense of the passage is—“If a person kill another by strangling, the fine of blood is due from the *Aâkilah* of the slayer according to Aboo Huneefah. If however a man repeatedly commit this act he must be put to death as an evil doer, and his iniquity be removed by destroying him.” The Futwas of the law officers of the nizamat adawlut are governed by the opinion of the two disciples. See case of Gour Dos, in printed Reports of Criminal Trials, 49, 1805.

<sup>5</sup> *Zukheerah*, quoted in *F. A.* The *Futawâ* of Kâzee Khân contains two cases to the same effect.—First, if the deceased have taken the poison into his own hand, and eat it, or drank it, without knowing it to be poison: in which case neither retaliation or the fine of blood is incurred: but the poisoner should be imprisoned and chastised. Secondly, if the poison be forcibly put into the mouth of the deceased by another per-

Case of a person bound and confined, till he dies from hunger.

17. If a person bind another, and keep him confined in a house until he die from hunger; Imám Mohummud declares him liable to corporal punishment; and the fine of blood to be payable by his *Aákilah*; but decisions are passed according to the opinion of Aboo Huneefah, that neither *kisás* or *diyut* is incurred.<sup>1</sup>

Or put alive into a grave, and kept there till death ensues.

18. If a person be put alive into a grave, and kept there until he dies, according to Imám Mohummud the murderer is liable to suffer death in retribution; but on the opinion of Aboo Huneefah judgment is given for the price of blood only, payable by the *Aákilah*.<sup>2</sup>

Or put into the same room with a wild beast, snake, or scorpion, who kills the person.

19. If a person bring another into his house, and put a wild beast into the room with him; and shut the door upon them; and the beast kill the man; neither *kisás* or *diyut* is incurred. And it is the same if a snake, or scorpion, be put into the house with a man; or if they were there before, and sting him to death. But if the sufferer be a child the price of blood is payable.<sup>3</sup>

Case of a person being bound, hand and foot, and thrown to be devoured by wild beasts.

20. It is recorded in the *Moontuka*, from Aboo Yoosuf, that in the case of a person's throwing another, bound hand and foot, to be devoured by wild beasts, Aboo Huneefah said, the offender was not liable to *kisás* or *diyut*; but should be corporally chastised and imprisoned till he repent; and Aboo Yoosuf added his own opinion, that the imprisonment in such a case should be for life.<sup>4</sup>

Circumstances to be assumed in the examples cited

In the whole of the examples above cited, it must be assumed that the wound, blow, or other cause of death, proceeds from a sane, and adult

son, in which case the fine of blood is due from the *Aákilah* of the poisoner." Several other authorities are cited by Moulaee Siráj ool Huk, in his treatise upon *Tázee* and *Seeásut*. The author of the *Moheet* observes that Aboo Yoosuf and Imám Mohummud, concur with Aboo Huneefah, in not considering homicide by poison to be *Kutl-i-úmd*, and that the reason why they do not infer a design to kill, as in other cases wherein they differ from the latter, is that poisonous drugs are sometimes given, in small quantities, medicinally; and although the giving a large quantity of poison might evince an intention to kill, it is possible the person who gave it may not have been aware that the quantity was excessive; wherefore evidence of wilful homicide is wanting, and the case is ruled to be *Shibah-i-úmd* only. It is added in the *Moheet* however, that the Imám may inflict punishment (*Seeásut*) of death upon a person who makes a practice of giving poison. *Tuhávee* also, in his *Futáwá*, declares, that if a person mix poison with food, and give it to another who eats it, without knowing it to be poisonous, and dies, the giver of the poison ought to suffer death, as *Seeásut*. And the author of the *Yunabee'a* states, that some lawyers are of opinion, the giver of poison incurs *kisás*, if it occasion death, as it operates like fire in separating and destroying the members. Siráj-ool Huk concludes, upon the whole of the authorities quoted by him, that according to the uniform opinion of Aboo Huneefah and his disciples, the killing by poison, in whatever manner it be given, is not deemed wilful homicide; that the fine of blood is payable, as for manslaughter, if the poison be compulsively put by another into the mouth of the deceased; but that if the deceased took the poison, into his own hand, and eat or drank it without compulsion, though he did not know it to be poison, the giver is liable to discretionary punishment only. He adds that in the present times the opinion of *Tuhávee*, for exemplary punishment, should prevail: as the mixing poison with food is a heinous offence; such as is declared punishable with death for the security of mankind.

<sup>1</sup> *Zuheereeyah*, quoted in *F. A.* Kazee Nujm-oo'-deen remarks on this case, that it is incumbent on the magistrate to inflict exemplary punishment.

<sup>2</sup> *Zuheereeyah*, quoted in *F. A.* Kazee Nujm-oo'-deen adds, in explanation, because the homicide is not committed by a wounding instrument.

<sup>3</sup> *Khusánut ool Moofteen* quoted in *F. A.*

The *Kázees ool Kooút* observes, on this case, that neither retaliation or the fine of blood is incurred when a man is killed, because the man might repel the beast, if he had courage to defend himself. But a child having no power to resist, his death is ascribed to the original author of it, and incurs the legal penalty.

<sup>4</sup> *Moheet* quoted in *F. A.*

person ; that the homicide is unlawful ; and that the blood of the person slain was under legal protection, from his or her being the subject of a Mosulman state ; and resident within its dominions. ' With respect to the stated judgment of retaliation for homicide, it must further be supposed that no legal defect or doubt (*Shoob'hah*) intervenes to bar the sentence of *Kisás*, and that it is demanded by the heirs of the slain ; as will be more fully noticed, after specifying the legal penalties for the several descriptions of unlawful homicide.

The penalty for *Kutl-i-úmd*, or murder, is *Kisás* (retaliation,) unless the heirs or representatives of the slain forgive or compound the offence. The murderer is also excluded from inheritance to the property of the slain. The right to demand retaliation for wilful homicide is founded on a text of the *Korán*, as well as upon a tradition from the prophet. The right of pardon and composition are also derived from the same authorities. And a tradition is cited for excluding the slayer from inheritance to the estate of the slain in all cases of unlawful homicide, except that arising from an intervenient cause, which is excepted from the general rule of exclusion as not attaching to any person the immediate act of bloodshed. Whether this distinction be well founded, or not, the object of the general principle of forfeiture of heritage, in cases of illegal homicide, is obvious. <sup>2</sup> The retaliation allowed for murder

Penalties for the several descriptions of unlawful homicide. And first of *Kutl-i-úmd*.

<sup>1</sup> *Hid. B. Jináyát. Ch. II.* 'On what occasions retaliation of homicide. B. *Hujr*, or Inhibition, respecting infants and lunatics. And B. *Siyur*, C. VI. concerning *Moostamins*, or protected foreigners. The British dominions in India, though really independent of any Mohummudan Government, are considered to form part of a Mosulman empire, from the nominal acknowledgment of the King of Dehly, in whose name the coin is still current. On this account, as well as from the sanctioned administration of Mosulman law, and the appointment of *Kázees* for the performance of part of the duties prescribed by it, the territory held by the East India Company is admitted to be *Dár ool Islám*, the seat of peace ; in opposition to a country not subject to Mohummudan rule, which is called *Dároolhurb*, the seat of hostility. See Commentary on the *Sirájiy yah* by Sir W. Jones, and Sale's Prel. Disc.

<sup>2</sup> Sir W. Jones in his remarks upon homicide, as one of the impediments to succession, under the Mosulman law of inheritance, observes that, "If a man were to dig a pit, or fix a large stone, on the field of another, and the owner of the field were to be killed by falling at night into the pit, or running against the stone, the doer of the illegal act, which was the primary occasion (but not the cause) of the death, must pay the price of blood ; but would not, it seems, be generally disabled from inheriting ; he ought, one would think, to be incapable of succeeding to the property of the deceased, whom he destroyed, and whom he might have meant to destroy by such a machination." Commentary on *Sirájiy yah*, p. 62. But without evidence of the intention to destroy, or of very culpable neglect, the forfeiture of inheritance does not appear, in any case, to be strictly equitable. In the preceding page of the commentary, homicide, under the Mohummudan law, is defined to be "either with *malice prepense*, and punishable with death ; or *without proof of malice*, and expiable by redeeming a Mosulman slave, or by fasting two entire months, and by paying the price of blood ; or thirdly, it is *accidental*, for which an expiation is necessary." In this definition the term *malice* must not be understood in the sense it bears, under the English law, to distinguish murder from manslaughter ; viz. "not so properly spite or malevolence to the deceased in particular, as any evil design in general ; the dictate of a wicked, depraved, and malignant heart." (Blackstone, Vol. 4, p. 198. And Foster, p. 256.) Sir W. Jones further remarks, that "malicious homicide, or murder, (for, by the best opinions, the Arabian law on this head nearly resembles our own) is committed when a human creature is unjustly killed with a weapon, or any dangerous instrument likely to occasion death." But though in this respect the better construction of the Mohummudan law of *Kutl-i-úmd* may correspond, in substance, with the English law of murder ; the former differs essentially from the latter in regarding chiefly the proof of an intention to kill, whether deliberate or sudden ; without any allowance for unpremeditated, though unlawful, homicide, committed in the heat of passion, upon strong provocation ; which (to borrow the words of Foster) "the benignity of our law imput-



is stated to have two ends in view. First, satisfaction to the heirs of the slain; either by retaliating blood for blood on the person of the offender; or by receiving a pecuniary compensation for the injury done by him: Secondly, the determent of others, by exemplary punishment, from committing the same crime. The latter, however, though the true, and only justifiable motive for capital punishment, by human laws, is a secondary object of the Mosulman law of *Kisás*; which considers the private injury in cases of homicide, unaccompanied with highway robbery, or other violent breach of the peace, to be of greater magnitude than the public detriment; and consequently leaves the demand of retaliation, with liberty of forgiveness, or composition, to the feelings and discretion of the legal representatives of the person murdered.<sup>1</sup> Shafi'ee maintains that *Kuffárah* (expiation by emancipating a Mosulman slave, or fasting for two months) is also requisite, in cases of murder, on account of the sin attending so heinous an offence; and a fortiori as it is enjoined by the law for the less criminal species of homicide. This argument however is not admitted by Abou Huneefah and his disciples, who contend for an adherence to the text of the *Korán*; and considering the sin of murder too great for expiation, deny the inference of its necessity or propriety, on conviction of this crime, from its being imposed by the law in atonement for offences of less magnitude.<sup>2</sup>

Penalties for  
*Shibah-i-úmd*,  
*Kutl-i-khutá*,  
and *Ká'em*  
*mokám-i-khutá*.  
Fine of blood  
for manslaughter.  
ter.

Expiation, and exclusion from inheritance, are the prescribed penalties for *Shibah-i-úmd*, or manslaughter; and for the two species of homicide by misadventure, denominated *Kutl-i-khutá*, and *Ká'em mokám-i-khutá*; besides *Diyut*, or the fine of blood, payable by the *Aákilah* of the offender.<sup>3</sup> The heavy fine (*Diyut-i Moghulluzah*) for manslaughter is one hundred female camels of four classes, viz. twenty-five of one year, and the same number of two, three, and four years of age, respectively. If adjudged to be paid in

eth to human infirmity;" and which therefore is admitted to extenuate the offence, from the crime of murder, to that of manslaughter. A passage in Mr. Hamilton's translation of the *Hidáyah*, at the conclusion of the book on larceny, which appears to contradict this remark, has been already explained to be a mistake of the translator.

<sup>1</sup> Vide book of *Jináyát* in *Hid.* and *F. A.* Also Sale's Trans. of the *Korán*, c. 2 and 17, and his Prel. Dis. p. 139.

<sup>2</sup> See Trans. of *Hid.* vol. 4, p. 273.

<sup>3</sup> The *Aákilah* are, literally, those responsible for the *Akl*, or *Ma'ákulah*, of the same import with *Diyut*; and meaning the fine or compensation for bloodshed. The *Aákilah* of a soldier, or other person enrolled in the public service, are those registered with him as his associates. If the party be not so enrolled, his family and tribe are considered his *Aákilah* as being his coadjutors. Persons resident in the same place are also responsible for each other, if there be not a sufficient number of the two former descriptions of *Aákilah* to make good the fine, under the prescribed limitation of four *dirms* (less than one rupee) each, including an equal contribution from the offender himself. Women and children are exempted from responsibility as *Aákilah*, from their not being able to assist or restrain; and the reason stated in the *Hidáyah* for involving others in the fine is, that the offender (who not being convicted of wilful homicide, would be too severely punished if personally made answerable for the whole fine) is supposed to have committed his offence by the aid, or through the neglect, of his associates; as although they may not have supported him, they might, if vigilant, have restrained him. See further provisions respecting the levying of fines for blood, and responsibility of the *Aákilah*, in the *Hidáyah*, B. *Máákil*, Trans. vol. 4, p. 448. It does not appear however that these provisions have ever been judicially enforced, against the kindred or connections of offenders, in Hindoostan or Bengal; though *Futúás* have been given, and sentences passed, for the payment of fines by the *Aákilah*, in pursuance of the letter of the law; the spirit of which, on this point, is contended by some to have exclusive application to Arabia: where the inhabitants were divided into tribes and closely united by the obligation of mutual support.

money it is ten thousand *dirms*, or one thousand *deenars*.<sup>1</sup> The fine for homicide by misadventure is also one hundred camels, but of the following descriptions, twenty males and twenty females of two years; and the same number of three and four years respectively. The fine in money is the same as for manslaughter. These fines, however, are for the death of a man. Those for a woman are limited to half the amount. But there is no difference between the fine for a Mosulman and for a *Zimnee*, or infidel subject.<sup>2</sup> In *Kull-ba subub*, or accidental homicide by an intervenient cause, expiation is not incumbent; nor is exclusion from inheritance incurred; according to the doctrine of Aboo Huneefah and his disciples; (though Shafi'ee maintains an opposite opinion); as those penalties are restricted to the direct offence of bloodshed, which, in this case, is not considered to have been committed. The fine of blood is however payable by the *Aákilah* of the wrong doer, as a compensation for the injury done by him; and on account of his transgression in unlawfully digging a well, or placing a stone, or other means of homicide, upon land not his own property.<sup>3</sup>

And for homicide by misadventure.

<sup>1</sup> There is some doubt upon the exact weight and value of the legal *dirm* and *deenaar*. But on a general calculation of 14 *keerát*, each weighing 5 barley corns, being 1 *dirm*; and 5 *dirms* being equal to a rupee of the same weight; the stated fine for homicide would be exactly 2000 rupees. Mr. Hamilton's valuation of the *dirm* and *deenaar*, referred to in a former note, would make it 350l. The award of *Diyut*, in cases of involuntary homicide, is founded on a text of the *Korán*. V. Sale's Trans. ch. 4, p. 72 and notes. But the amount is not fixed in the written law; and the regulation of it at one hundred camels, by the oral law, is said to be derived from Mohummud's grandfather, Abd ool Mootulib, having redeemed Abdoollah, the prophet's father, from sacrifice, by an offering of one hundred camels. See note in Sale's Trans. p. 369.

<sup>2</sup> What is stated respecting fines, is according to the opinion of Aboo Huneefah and Aboo Yoosuf. Imám Mohummud held a different opinion concerning the description of camels, to compose the fine for manslaughter: and a further difference of sentiment is quoted in the *Hidayah* from Shafi'ee, both respecting the fine of camels for homicide by misadventure; and regarding the money fine, in *dirms*, as consisting of twelve, instead of ten thousand. V. *Hid.* ch. *Diyut*, Trans. vol. 4, p. 330.

<sup>3</sup> Shafi'ee contends that the person who occasions the death of another by an intermediate cause is equally a shedder of blood, as in cases of homicide by misadventure; and should therefore be liable to the same penalties. See Trans. of *Hid.* vol. 4, p. 277. In the passage quoted in a former note from Sir W. Jones's commentary on the *Sirajiyah*, the doer of the illegal act, which occasions this species of accidental homicide, is inadvertently mentioned as personally bound to pay the price of blood; and it is not specified by whom the fine of blood is payable in other descriptions of involuntary homicide. The *Diyut* is however expressly stated in the *Hidayah* and *F. Aalumgeeree* to be payable by the *Aákilah*, where there are any, for every kind of unlawful homicide established by proof (viz. independently of the slayer's acknowledgment which is obligatory upon himself only) except murder; the legal penalty for which is *Kisás*; and if this be commuted to, or compounded for, the price of blood, it is demandable from the murderer alone, or his property. When there are no known *Aákilah*, or an insufficient number for the payment of the fine of blood, according to the prescribed rate of four *dirms* each, the slayer is likewise responsible for the *díyut* in cases of involuntary homicide, if he be a *Zimnee*; and also according to one report of Aboo Huneefah's opinion, if he be a Mosulman. But the prevalent doctrine is, that, in a Mohummudan community, when the involuntary slayer is a Mosulman, and the fine of blood due to the heirs cannot be recovered from his *Aákilah*, it is payable from the *Být ool máh*, or public treasury; on the principle that all the members of such a community are associates, and co-adjutors to each other; as well as because the property of a person dying without heirs devolves to the treasury of the state. See Trans. of *Hid.* vol. 4, p. 457 and 463. The author of the *Kifayah* supports the opinion last noticed on the authority of the *Záhir oo' ruwáyát*; but the law officers of the nizamat adawlut do not consider it applicable to the British possessions in India; and in a *Futwá*, recorded 9th July, 1807, declared a Mosulman, who was convicted of two

Confessions, in charges of homicide, and other criminal accusations, how far admitted for conviction.

Rule that the whole of what is stated in explanation be taken as part of the confession.

In charges of homicide, as well as in other criminal accusations, before a Mohummudan court of judicature, the greatest weight is given to the confession of the party accused, whether made before the court, or elsewhere, provided it be voluntary, and by a person of sane mind and mature age.<sup>1</sup> But to found a conviction of murder, it is necessary that the confession expressly declare the blow, wound, or other cause of homicide, to have been wilful.<sup>2</sup> It is also a rule that the whole of what is stated in explanation be taken as part of the confession.<sup>3</sup> In the *Zeeâdât* of Imâm Mohummud it is stated to be a general principle, that "whoever confesses an act which subjects him to a legal penalty, and subsequently offers a plea, to exonerate himself from the penalty, must establish such plea by proof. But if he deny that which occasions the penalty, his denial is admitted." This passage is open to ambiguous construction; and from the case to which it is applied (the affirmative answer of the prophet to a question from Sâd Ibn-i-Ibâdah, whether, on finding a man with his wife, he should defer killing the adulterer till four witnesses were present to prove the adultery) might be understood to require proof of a plea of justification in all cases of acknowledged homicide. The author of the *Humâdeeyah*, who cites the *Zeeâdât*, however, deduces from the above quotation, a certain inference that the statement of an act, under "circumstances, which prevent its being penal, is a virtual denial of the cause of penalty;" and this conclusion is undoubtedly just and rational when there is no evidence against the acknowledgee of the act, besides his own statement of the case.<sup>4</sup>

homicides by misadventure, liable to the *diyut* for each, "payable by himself, if he have no *Aâkilah*." He was further declared subject to discretionary punishment (*Seeasut*) on consideration of the circumstances of the case; and of his inability, from want of assets, to make good the fine of blood.

<sup>1</sup> *Hid. B. Ikrâr*, or acknowledgment.

<sup>2</sup> The following case is quoted from Kâzee Khân in the *F. A.* "A person confesses, saying, *I struck such a one with a sword and thereby killed him*. Aboo Yoosuf declares this confession to establish involuntary homicide only; as the party does not acknowledge that he struck wilfully." In the chapter of miscellaneous cases, which concludes the *Hidâyah*, a general confession of homicide, without its being specified as wilful, is noticed as incurring retaliation; but this is not deemed authoritative; nor the distinction between *Hudd* and *Kisâs* on which it is founded. See *Trans. of Hid.* vol. 4, p. 571.

<sup>3</sup> This is inferrible from a case in the *Moheet*, cited in the *F. A.* as follows:—"If a person confess that he has struck such a one with a sword, and thereby killed him; or that he brought a knife and killed such a one; and then say it was not his intention to have killed the deceased, but another person; *Kisâs* is prevented by such declaration." It is, of course, supposed that there is no proof of wilful homicide independent of the confession.

<sup>4</sup> There appears to be some ambiguity, if not inconsistency, in the cases of confessions, which occur in different books of Mohummudan law. In those quoted from Kâzee-Khân and the *Moheet*, the circumstances of the cases are evidently considered to form an essential part of the confession; and the general inference in the *Humâdeeyah* is clearly to the same effect. Yet the following three cases are cited, in Sirâjool-Huk's treatise on *Tâzeer*, from the *Khuzânutoorwâdyât*. 1. If a person, killing another, plead that the deceased assaulted him, and prove it, neither *Kisâs*, *Diyut*, or *Tâzeer*, is incurred. 2. If he have no proof of the plea of assault, and the slain were a known assailant (*Mokâbur*) *Kisâs* is barred; but the fine of blood is due. 3. If there be no proof of the plea, and the slain were not a known assailant, but, on the contrary, a man of peaceable character, *Kisâs* is incurred. A case similar to the second, is also quoted from the *Itâbeeyah*, with an addition, that *Ibn-iziyâd* held nothing to be due from the slayer in such case. The following further instance is stated in the *Humâdeeyah*:—"The body of a person killed is found in a house; and the owner of the house alleges that the deceased was a thief who came to rob him, and was therefore killed by him. It is reported from Aboo Huneefah, that in this case, if signs of the

If the prisoner plead not guilty to a charge of murder, the evidence requisite to establish it, so as to warrant a sentence of *Kisás*, is the positive testimony of two competent eye-witnesses, of ascertained or apparent credit. The testimony of slaves, deemed the property of their masters, is not admissible in any case; as their state of bondage precludes them from exercising any act of authority, which the delivery of evidence is considered to be. The testimony of women is also not admitted to prove a charge of wilful homicide, on the ground of a tradition, that in the time of the prophet, and his two immediate successors, it was an invariable rule to exclude the evidence of women in all cases inducing *Hudd* or *Kisás*. In cases of homicide not wilful, as in all other cases wherein specific punishment, or retaliation, is not incurred, the evidence of one man and two women is received, as equivalent to that of two men. But if the person accused be a Mosulman, it is requisite that the witnesses against him be also of the same religion. The testimony of *Zimmees*, or infidel subjects, with respect to each other, is admissible, although they be of different religions. The evidence of a Mosulman is also valid against a *Zimnee*; and the testimony of both has validity against an infidel *Moostámin*, or protected stranger. But the evidence of the latter is invalid against any person except one of his own countrymen, also a protected alien. Convicted slanderers, atrocious criminals, and persons of known bad principles or character, are not admitted to be sufficient witnesses, from want of credit. And the testimony of near relations or connections, such as father and son, grandfather and grandson, husband and wife, master and slave, in favor of each other, is not admissible, in consideration of their relative interests.<sup>1</sup>

Evidence required to establish a charge of murder, or other homicide, when deemed by the accused

When a charge of unlawful and wilful homicide is legally established against a sane and adult person, either by his or her confession, or by the requisite evidence, retaliation of death is equally incurred, whether the party slain were an infidel or a *Mooslim*; the slave of another (viz. not the slayer's) or free; a woman or man; an infant or of mature age; sound in body and mind; or sick, dismembered, blind, lame, or insane; provided, in all cases, that the blood of the deceased was under protection of the law, from permanent residence within the territory of a Mosulman state, in subjection to its authority.<sup>2</sup> But under this provision the murder of an infidel

In what cases of established wilful homicide, *Kisás* is incurred.

In what cases it is not incurred.

deceased having been a thief be found; or if he were notorious for theft; the owner of the house is not responsible for the homicide. But other reports state, that *Kisás* only is barred; and the fine of blood is due." In the last case, however, the proof of the homicide does not rest entirely upon the confession of the party. And perhaps in the examples quoted from the *Khuzánutoo-ruwáyát* the fact of the homicide may be understood as established independently of the slayer's acknowledgment. In a *Futwá* delivered by the law officers of the nizamat adawlut, relative to a prisoner named Ghosoo, who confessed having killed his wife; but stated in vindication that he found her in bed with an adulterer; they observed, "In this case there are two opinions: one that the fact pleaded in justification is not admissible without proof: this is *Kiyás*, or the apparent construction of the law. The other, founded on *Istahsán*, or a more profound or approved construction, is, that the plea is admissible without evidence. The latter opinion is preferred; and the situation in which the prisoner found his wife affords a presumption of adultery, sufficient to bar *Kisás*." See case referred to, but without this part of the *Futwá*, in the printed reports of cases adjudged by the nizamat adawlut, 15, 1807. See also Trials 10, 1807; 24, 1807; and 6, 1809.

<sup>1</sup> The nature of this tract does not admit of the rules of evidence being stated more at length. But they are detailed in a chapter of the *Hidayah*, entitled *Shuhádut*, or evidence. See Trans. of *Hid.* vol. 2, p. 665. See also printed reports of cases adjudged by the court of nizamat adawlut, Trials 8, 1805; 10, 1807; and i. 1809.

<sup>2</sup> See Trans. of *Hid.* vol. 4, p. 279. The instances stated are also cited in the *F. A.* from Kázee Khán; the *Kunz*; *Kholásah*; *Moheet*; and *Káfec*. *Shahílee* differs

*Moostámin*, whether by a Mosulman, or *Zimnee*, does not incur retaliation of death.<sup>1</sup> Neither is it incurred by a parent, or by any paternal or maternal ancestor, for the murder of his or her child, or other lineal descendant; as well in consequence of a declaration by the prophet that "retaliation must not be executed upon the parent for his offspring," as in consideration of the slain having derived his (or her) existence from the slayer.<sup>2</sup> Nor is a master liable to *Kisás* for the murder of his own slave; or the slave of his child; as the murderer himself would be the person legally entitled to demand retaliation in the former case; and in the latter, as in every case where a child may possess the right of retaliation for death against his parent, the enforcement of such right is prevented by the regard due to parentage.<sup>3</sup> The demand of retaliation is further barred, if the person murdered be the joint slave of the murderer, and of others; the right failing in proportion to the murderer's share, and retaliation of death not admitting of being inflicted in part only.<sup>4</sup> The same principle is applicable if the person killed be a slave appropriated by the owner to the public service.<sup>5</sup> If a murder be committed by two or more persons, of whom any one is exempt from *Kisás*, such as by the father of the slain, and a stranger; or by an adult person and a minor; judgment of retaliation is barred against the whole; as it also is if two persons jointly commit homicide, one with an iron weapon (being an instrument of murder), the other with a staff, or other instrument of manslaughter. In this case a moiety of the fine of blood is due from the person who struck with the iron weapon; and the remaining half is payable by the *Aákkilah* of the person who struck with the staff.<sup>6</sup> It is stated in the *Hidáyah*, "If a number of persons unite in murdering a man, analogy suggests that one of them only is to be put to death in retaliation; as equality is indispensable in the infliction of retaliation; and between ten persons (for instance) and one person, there is no equality. The whole are however liable to suffer death; analogy being in this instance abandoned for a more approved construction of the law; because it is related that when, on a certain occasion, seven of the inhabitants of Sunâ'áh murdered a man, Omur decreed retaliation upon all the seven; saying, if the whole people of Sunâ'áh had assisted in the murder, I should certainly have slain them all; and also because murder is most frequently committed by force; and retaliation has been ordained for the purpose of determent, and a warning to the unwary. Each individual

Cases of homicide committed by two or more persons.

from Abou Huneefah, and his disciples, in maintaining that a Mosulman is not to be put to death for killing a *Zimnee*; nor a freeman for killing the slave of another person. His arguments, and those opposed to him, are detailed in the *Hidáyah*, vol. 4, of Trans. p. 279, 280.

<sup>1</sup> Trans. of *Hid.* vol. 4, p. 281. Also the *Tubeen* quoted in the *F. A.* But Kázee Nujm oo' deen remarks that the fine of blood may be adjudged in such cases.

<sup>2</sup> *Hid.* and *Kafee* quoted in *F. A.* The fine of blood however is expressly declared due from the property of the murderer. See Trans. of *Hid.* vol. 4, p. 350.

<sup>3</sup> See case of *Bula*, 32, 1805, in the printed reports of cases adjudged by the nizamat adawlut.

<sup>4</sup> Trans. of *Hid.* vol. 4, p. 282. With respect to slaves however, it must be remembered, that those referred to in the Mohummudan law, and in a strict view of it alone considered to be legal slaves, are infidels conquered and made captive in war. They are held to be the property of the captors by right of conquest. But a reciprocal right is not admitted, with respect to Mosulmans or *Zimnees*, conquered by infidels. Nor can any other title legalize the slavery of a freeman, whether Mosulman or infidel; so as to bring it within the provisions of the Mohummudan criminal law.

<sup>5</sup> *Bundah-i Wulfi. Kholásah*, quoted in the *F. A.*

<sup>6</sup> *Tuhzeeb* and *Shurh-i-Mubsoot*, quoted in the *F. A.* It is further stated in the *Hidáyah* (see Trans. vol. 4, p. 350,) that "in all wilful offences, where retaliation is remitted because of a doubt, a fine is due from the property of the offender."

concerned is, therefore, as if he alone had committed the act; and consequently equality is certified, and retaliation incurred; that the lives of mankind may be in security.”<sup>1</sup> A quotation from the *Káfee* is given in the *F. Aálumgeeree* to the same effect. But in the *Jámá oo’ rumooz* it is quoted from the *Záhídee*, that the rule for retaliation of death, upon several persons committing a murder, is applicable only to such as may have given a mortal wound to the slain; and therefore accomplices employed in watching, or even those who assist in holding the hands and feet of the person murdered, are not liable to *Kisás*. But it is added by *Kázee Nujm oo’ deen* that they may be punished, in any mode of exemplary punishment (*Seeáfut*,) at the discretion of the magistrate. The following case is cited from the *Zukheerah* in the *F. Aálumgeeree*. “If a person wound another in the belly, so as to bring his entrails out; and afterwards another cut off the head of the wounded person; the latter is considered the slayer; and liable to *Kisás*, if the homicide be wilful; or to the fine of blood, if involuntary; and the person who gave the belly wound is liable only to the established fine for stabbing the belly, viz. one third, or two thirds, of a complete fine; according as the stab may be entirely through the body, or not. But it is supposed, in the case stated, that the wounded person lived, or was capable of living, a day after receiving the wound in his belly. If, on the contrary, there be no possibility of his living after his receiving the belly wound, and he be at the point of death, when beheaded; the homicide is imputed to the person who gave the belly wound; incurring *Kisás*, or *diyut*, as it may be wilful or otherwise; and the person who struck off the head is liable to *Tázeer*.” It is further quoted from the *Kholásah*, that “if a person give a mortal wound, from which there is no hope of life; and a second person give a subsequent wound; the former is considered the slayer, if the two wounds have been given successively; or both persons are deemed to have killed the deceased, if the two wounds were given at the same time. In like manner, if one person have given ten wounds; and another person one wound; (supposing all the wounds to have contributed to the homicide;) both are held to have been principally concerned.” A quotation from the *Moontuka* is likewise cited in the *F. Aálumgeeree*, from the *Zukheerah*, that “if a man’s throat be cut through, except a small part of the wind-pipe; and when he has a little life remaining, another person give him a finishing stroke; the latter is not subject to *Kisás*, because the deceased was virtually killed by the first wound; inasmuch that if his son had died, leaving his father in the expiring state described, the son would be considered the legal heir to his father, as having survived him.”

Retaliation for murder is considered to be the right of the person murdered; and to devolve to his legal heirs, who represent him in the exaction of it. This is declared in the *Hidáyah*. And *Kázee Khán* states, to the same effect, that the persons entitled by law to succeed to the estate of the slain, are also entitled to retaliation for his death. This right therefore appertains to the husband, and to the wife, as well as to the heirs of blood; and the same rule is applicable to the right of *Diyyat*. If the heir to the slain be a minor, or idiot, and his (or her) father be living, the latter is entitled to demand or compound retaliation. But an appointed guardian, not being the father of the minor or idiot, is not so empowered; and the reason given in the *Hidáyah* is, that “the end of retaliation is relief and satisfaction to the mind; which are restricted to the father, as he, because of his near relationship, and tender affection, is the substitute of his children with respect to

By whom retaliation for murder is demandable.

<sup>1</sup> Trans. of *Hid.* vol. 4, p. 302, with corrections.

<sup>2</sup> *Sháfi’ee* and *Málík* deny the right of the husband, or wife, to demand retaliation, or the fine of blood, for the murder of each other. See their argument, and that opposed to them, in Trans. of *Hid.* vol. 4, p. 300.

their feelings.”<sup>1</sup> Where part of the heirs are minors, and part adult, Abou Huneefah is of opinion that the adult heirs alone, or in conjunction with the sovereign or his delegate, on the part of the minors, may demand *Kisás*: but Abou Yoosuf and Imám Mohummud maintain that retaliation of death cannot be demanded in such case, till the minor heirs attain maturity. The same difference of opinion exists in the case of one or more of the heirs entitled to require *Kisás* being an idiot, or insane, or absent; as well as in the case of a murdered slave being the joint property of a minor and an adult.<sup>2</sup> When all the heirs are minors, some lawyers consider the sovereign, or his delegate, to have the power of enforcing *Kisás*, in their behalf; whilst others think it should be deferred till one or more of the minors become of age.<sup>3</sup> It is however generally agreed, that if the murdered person leave no heir or legal representative, the sovereign, and his deputy the *Kázee*, are authorized to enforce retaliation of death.<sup>4</sup> If a slave be murdered, the master (*Moula*) is entitled to demand *Kisás*; unless the deceased had been partly emancipated, and was slain before he had paid the ransom for his complete liberation; in which case the master, who has only a partial right, is not authorized to demand retaliation for the murder of him.<sup>5</sup> The master of a pawned slave is also precluded from exacting *Kisás* for his murder whilst in the possession of his pawnee, without the concurrence and joint application of the latter.<sup>6</sup>

Right of heirs and masters of slaves to remit or compound claim of retaliation.

Retaliation of death, in cases of murder, being considered the private right of the heirs; or with respect to slaves, of their masters; they are at liberty to remit their claim, and forgive the offender; or to compound, with the consent of the murderer, for a compensation.<sup>7</sup> If there be several heirs, and one of them forgive the offence; or compound with the offender; the other heirs are thereby debarred from enforcing *Kisás*; but are entitled to their proportions of the fine of blood. If a man murder two persons, and the heirs of one only forgive him; the heirs of the other are still at liberty to demand retaliation. In like manner, when two or more persons are murdered, the heirs of any of them, who may attend and demand *Kisás*, are entitled to the enforcement of it, without waiting the attendance of the heirs of all the slain; and when the offender has suffered retaliation of death for one murder, the heirs of other persons murdered by him are not entitled to claim payment of the fine of blood from his estate.<sup>8</sup> Nor is such fine payable if the party, liable to *Kisás* for murder, die before the execution of it.<sup>9</sup> But if a murderer, sentenced to suffer *Kisás*, become insane before he has been delivered over by the *Kázee* to the heir of the slain, he is not to be put to death; and his property is answerable for the fine of blood.<sup>10</sup> If he become insane after

In what cases insanity bars the execution of a sentence for *Kisás*.

<sup>1</sup> Trans. of *Hid.* vol. 4, p. 287, with correction.

<sup>2</sup> Trans. of *Hid.* vol. 4, p. 287; also the *Moheet* quoted in *F. A.*

<sup>3</sup> The *Moheet*, quoted in *F. A.*

<sup>4</sup> The *Ikhtiyár*, quoted in the *F. A.* The *Hidayah* also contains a passage to the following effect, omitted in the English translation, vol. 4, p. 287. “The *Kázee* is authorized, like the father, to exact *Kisás*; as he represents the sovereign in the enforcement of it; and the sovereign may exact it for the murder of a person leaving no heir.”

<sup>5</sup> *Moheet*, and *Futuwá* of *Kázee Khán*, quoted in *F. A.* The principle stated is also recognized in the *Hidayah*. See Trans. vol. 4, p. 285.

<sup>6</sup> *Kázee Khán*, quoted in *F. A.* and *Hidayah*. See Trans. vol. 4, p. 285.

<sup>7</sup> See a full declaration of this right, and the authorities upon which it is founded, (a text of the *Korán*, and saying of the prophet), in Trans. of the *Hid.* vol. 4, p. 299.

<sup>8</sup> *Sháfi* differs in opinion from Abou Huneefah and his disciples, on this point. See Trans. of *Hid.* vol. 4, p. 303.

<sup>9</sup> Trans. of *Hid.* vol. 4, p. 304.

<sup>10</sup> The *Kholásah*, and *Tátárkháneyah*, quoted in *F. A.*

he has been condemned, and delivered over by the *Kázee* to the heir of the slain, the latter is at liberty to put him to death, notwithstanding his insanity.<sup>1</sup> It is not requisite that the heir execute the sentence in this, or any other case, with his own hand. But his presence is required; a sword, or similar weapon, is the prescribed instrument; and the established mode of execution is by decapitation.<sup>2</sup>

Retaliation for offences against the person, not affecting life, is restricted to wounding and maiming in the following instances.

1. For any member of the body severed at the joint; as a hand, arm, foot, or leg. Also for the fingers, and toes, or part of them, if separated at the joint.

2. For an ear, or part of an ear, cut off.

3. For the nose, if completely cut away.

4. For the lips; or either of them.

5. For the teeth; or any number of them.

6. For an injury to the eye, destroying the sight, without forcing the eye from the socket.<sup>3</sup>

7. For a wound in the head, or face, which lays bare the bone.<sup>4</sup>

A perfect equality, however, being the condition of retaliation for personal injuries not occasioning death; it is not claimable under any circumstances of inequality; such as one party being a man, the other a woman; the one being free, the other a slave; or both parties being the slaves of different persons, and of different value. Nor is the right hand, or foot, subject to amputation for the left; or *vice versa*; nor a sound member to be amputated for an unsound one. A difference of religion, however, does not bar the demand of retaliation; as the Mosulman and infidel subject are considered to be on an equality with respect to personal protection. Retaliation is not incurred in any cases of dismemberment, except at the joint, from the difficulty of maintaining an equality, as well as danger to life, in enforcing it; and for the like reason it is not allowed in cases of fractures, or injury to the bones, excepting the teeth, which may be extracted with safety. It must further be observed, as a general principle, that retaliation is not due in any case, unless the offence be wilful; which is determined by the evidence and circumstances, without regard to the instrument; as required in the stated distinction between murder and manslaughter.<sup>5</sup>

Retaliation for personal offences, not affecting life, to what cases restricted.

Circumstances under which it is, or is not, claimable.

<sup>1</sup> *Kázee Khán*, quoted in *F. A.*

<sup>2</sup> *Káfee* and *Moheet*, quoted in *F. A.* See also Translation of *Hid.* vol. 4, p. 283, where an opposite opinion, by *Sháfi'lee*, is stated, that on a principle of equality the murderer should be put to death by the same means as were used by him in committing the murder; unless the act be such as the law expressly prohibits. The general mode of execution now in practice, both for men and women, is hanging; and the bodies of the former are usually gibbeted near the spot where the crime was committed.

<sup>3</sup> The retaliation in this case is to be inflicted by holding a hot iron before the corresponding eye of the offender, till his sight is extinguished. *Hid.* Trans. vol. 4, p. 294, and *Káfee*, quoted in *F. A.*

<sup>4</sup> This description of wound, denominated *Mooziheh*, is mentioned in the *Hidáyah*, as incurring retaliation, "provided the wound was wilfully given;" (Trans. vol. 4, 338.) but was inadvertently omitted in the first edition of this Analysis.

<sup>5</sup> *Sháfi'lee* maintains a different opinion upon this point. See Trans. of *Hid.* vol. 4, p. 295.

<sup>6</sup> *Hid.* chapter entitled "*Kisás* in cases short of life." And chapter of the same designation, in *F. A.* containing quotations from the *Futáwá* of *Kázee Khán*; the *Káfee*, *Moheet*, *Zukheerah*, *Khuzánool* *Moofteen*, *Jouhurah* oo *Nýjurah*, and other authorities.



*Ursh*, or fine of blood payable in cases short of life, which do not incur retaliation.

Both *Kisás* and *Ursh* open to remission, or composition, as in cases of homicide.

Second general head of the criminal law, *Hudd*, or *Hoodood*.

Its general principles; and how distinguished from *Kisás* and *Tazeer*.

*Zina*, or whoredom. Its legal definition; and in what cases liable to *Hudd*.

Nature of *Shoobhah*, which bars a sentence of *Hudd*.

Offences against the person, which do not incur retaliation, subject the offender, if the act be wilful, or his *Aákilah*, if the act be involuntary and the established fine amount to five hundred *dirms*, to the payment of *Ursh*, or the fine of blood in cases short of life. The rate of this fine is specifically fixed in some cases; particularly for dismemberments, and for wounds in the head and face, termed *Shujjah*; and for any material injury to the person, or destruction of faculty, it is equal to the *diyyat* for homicide. In other cases, and especially where the injury is partial, or indeterminate, the compensation is left to be settled by an equitable adjustment (*Hukoomut ool úd*) which, according to *Tuhávee*, is to be made by supposing the wounded person a slave, and ascertaining his difference of value, with or without the wound he has received. If such difference be equal to a twentieth of the full value, before the wound was inflicted, a twentieth of the entire fine of blood is to be adjudged; if a tenth, or any other proportion, the fine to be regulated accordingly.<sup>1</sup> Both *Kisás* and *Ursh*, for personal injuries not affecting life, are however open to composition between the parties; and the injured person is at liberty to remit the penalty, on the same principles of private right and satisfaction, which have been stated with respect to the provisions for homicide.

The second general head of the Mohummudan criminal law, denominated *Hudd*, or *Hoodood*, is stated, in the *Hidáyah*, to comprise the specific penalties fixed with reference to the right of God, or in other words, to public justice. It is therefore distinguished from *Kisás*, which is considered the right of man, or private; as well as from *Tázeer*, which is indefinite, and left to the discretion of the magistrate.<sup>2</sup> The design of *Hudd* is to deter offenders from the perpetration of criminal acts, injurious to the community of God's creatures. This being a public right, the *Imám*, or his deputy, is exclusively authorized to enforce it. The claim and prosecution of the party injured are not indispensably requisite; and he cannot remit, or compound, the prescribed penalty, as in cases of *Kisás*. But the execution of *Hudd* is prevented by any doubt, or legal defect; and the *Imám* is directed to administer the law with lenity; preferring a dispensation with the legal penalties to the rigid exaction of them, in all cases that may admit of it.<sup>3</sup>

Of the five descriptions of crimes beforementioned as provided for under the general head of *Hudd*, the first is *Ziná*, or whoredom; which is defined in the *Hidáyah* to be "an unlawful conjunction of the sexes;" or with respect to the man, is more particularly described as "the carnal conjunction of a man with a woman who is not his property, either by right of marriage, or bondage; and respecting his property in whom there may be no doubt or presumption." (*Shoobhah*).<sup>4</sup> The same definition, in substance, is quoted in the *F. Aálumgeeree* from the *Niháyah*. In the *Káfee*, as also cited in the *F. Aálumgeeree*, *Shoobhah* is stated to be "that which appears to be just and right, but in truth is not;" and with respect to the subject in question, is specified to be of three kinds. 1. *Shoobah-i Ishúbáh* or misconception of the act as legal, when it is in fact illegal. It is requisite therefore that such misapprehension should influence the person by whom the act is committed; and must be pleaded by him to bar a judgment of *Hudd*. 2. *Shoobhah-i Hookmee*, or consequential to the actual existence of some ground of

<sup>1</sup> *Hidáyah*. Section respecting fines for offences not affecting life; and corresponding section in the *F. A.*

<sup>2</sup> *Hid*. Introduction to book of *Hoodood*.

<sup>3</sup> *Buhr-i-rayik*, *Moheet* of Surukhsee, *Ashbáh ó Nuzúyir*, and *Tubeen*, quoted in the *F. A.*

<sup>4</sup> See Trans. of *Hid*. vol. 2, p. 19.

legality, to the practical operation of which there is an impediment. The doubt in this case therefore is independent of the belief of the party; and prevents the infliction of *Hudd*, whether he suppose the act legal, or otherwise; insomuch that the parentage in this case may be established; though it cannot be in the first description of illegal connexion. 3. *Shoobhah-i-úkd*, or a presumption from marriage; which, according to Aboo Huneefah, is sufficient to exempt the parties from the punishment of *Hudd*, whether they know the marriage to be illegal, or not. But his disciples maintain that if the parties marry, with full knowledge of the illegality of the contract, no doubt subsists to preclude the sentence of the law. A similar explanation of *Shoobhah* is given in the *Hidáyah*, with a specification of the following instances of the first and second kinds; viz. of the former, if the woman be the slave of the man's father, mother, or wife; his wife repudiated by three divorces, or completely divorced for a compensation, during her *Iddut*, or period of probation; his *Om-i wulud*, or slave who has borne a child to her master, in her *Iddut*, after emancipation; his fellow slave, belonging to the same master; or a slave delivered in pledge, or borrowed, with respect to the pawnee, or borrower. Of the latter kind, if the woman be the slave of the man's son or grandson; his wife repudiated by an indirect, implied, divorce only; his late slave, sold to another, but not yet delivered; a slave stipulated to be given in dower to his wife, but not yet received by her; and a slave held in partnership, with respect to any of the partners.<sup>1</sup>

The stated punishment for the offence of *Ziná*, or whoredom, when legally established, against a man of sound understanding and mature age, being a Mosulman, and free, who has consummated a lawful marriage with a woman of the same description (all of which requisites are implied in the terms *Mohsun*, and *Ihsán*,) is lapidation, or stoning to death. If the convicted person be free, sane, and adult; but without the other conditions of *Ihsán*, viz. either not a Mosulman, or unmarried, he is liable to a sentence of one hundred stripes. If he be a slave, the punishment is reduced to fifty stripes, on the authority of a passage in the *Korán*; which declares that slaves shall be subject to half the punishment only of free married persons. The penalties for a man and woman, in like circumstances, are the same; but the latter is not to be stripped, except of her outward garment, to receive the stripes inflicted upon her; and with a further regard to decency she is to receive them in a sitting posture; whereas a man is to be punished standing, and naked, except his girdle. It is also recommended, by the example of the prophet and Alee, though not positively enjoined, that in stoning a woman, a hole in the ground be dug to conceal her body, as high as the breast. In the execution of lapidation, if the charge have been established by witnesses, they are required to commence the stoning; which is to be continued by the *Imám*, or *Kázee*; and concluded by the by-standers. If the conviction be founded upon the confession of the party, the *Imám* or *Kázee* is to begin the stoning, and the people present to finish it. The body is afterwards to receive the usual ablutions, and interment. In scourging for whoredom, it is directed that the stripes be inflicted with a whip (*tázeedánah*) which has no knots in it; that it be applied with moderation; viz. neither with severity, such as might tend to destruction; nor with a degree of lenity inadequate to the design of correction: and that the hundred stripes be given on different parts of the body, so as not to be attended with danger to life. It is further provided that the punishment of scourging, and stoning, shall not be united;

Punishment of  
the crime of  
Zine, when es-  
tablished

<sup>1</sup> See Trans. of *Hid.* vol. 2, p. 20. Many other instances are given in the *F. A.* But a detail of them would occupy too much room in this summary; and does not appear requisite.

the object of the former, which is the correction of the party, being incompatible with the latter ; which is intended to be an example and warning to others. The addition of banishment, or imprisonment, for a limited period, to stripes, is left to the discretion of the *Imám* or *Káfee*. The execution of a sentence for scourging, but not for lapidation, is ordered to be suspended in cases of illness ; and both are to be postponed, in the case of a pregnant woman, until she be recovered from her labor.<sup>1</sup>

Evidence required to establish a charge of whoredom.

The severity of the punishment which the Mosulman lawgiver prescribed for whoredom, by a married man, possessing the requisites of *Ihsám*, when established upon full legal evidence, appears to have influenced him in requiring such proof of the offence as can seldom be obtained ; and in allowing the punishment to be avoided by means which must, almost always, be expected to prevent the execution of a sentence of lapidation. The evidence of women is not admitted to prove the commission of any offence incurring *Hudd*, or specific punishment ; and the positive testimony of four men, of ascertained credit, is requisite to prove a charge of whoredom, if denied by the accused. What has been already stated concerning the qualification of witnesses admissible in cases of murder, is equally applicable to the admissibility of witnesses on a charge incurring *Hudd* ; except that, as the prosecution for *Hudd* is of a public nature, the party injured, and his connexions, are admitted to be competent witnesses. It is further declared in the *Hidáyah*,<sup>2</sup> that “in cases inducing specific punishment, witnesses are at liberty either to give or withhold their testimony ; because they are distracted between two laudable actions ; namely, the establishment of the penal act, and the preservation of character. The concealment of vice is moreover preferable ; because the prophet said to a person who had borne testimony, *verily it would have been better for you if you had concealed it*. And also because he elsewhere said—*Whoever conceals the vices of his brother Mosulman shall have a veil drawn over his own crimes in the two worlds by God*. Besides, the instruction given by the prophet, and his companions, for the prevention of punishment, is a proof that the concealment of such evidence as tends to establish it is commendable.” If less than four competent witnesses bear evidence to whoredom, they are liable to the punishment of slander ; unless the accused subsequently confess. If four witnesses have given evidence, and one or more of them be subsequently found incompetent, as being a slave, or previously convicted of slander, the whole of the witnesses are also liable to the penalty for that offence. If any witness retract his testimony, it is no longer valid. And if one of four witnesses retract after the execution of a sentence of lapidation, he is responsible for a fourth of the fine of blood, besides being punishable for slander. But if five witnesses have given evidence, the testimony of one being retracted incurs no penalty, and does not affect the sentence ; as it is still maintained by the requisite legal proof. It is further stated in the *Hidáyah* that “the apparent probity of the witnesses does not suffice in a charge of whoredom. It is necessary that the magistrate ascertain their probity, both by an open and secret purgation ; in such a manner that possibly some circumstance may appear to prevent the punishment ; because the prophet has said—*Seek a pretext to prevent punishment according to your ability* ; contrary to all other cases, in which the

<sup>1</sup> See the whole of what has been stated on the punishment of whoredom in Trans. of *Hid.* vol. 2, p. 8 to 18. The same provisions, and others of less consequence, are quoted in the *F. A.* from the *Káfee* ; the *Mubsoot* of Surukhsee ; the *Buhr-i ráyik* ; *Khuzánut ool Moofteí en* ; *Eezah* ; *Moheet* ; and other authorities.

<sup>2</sup> See Trans. of *Hid.* v. 2, p. 666.

apparent integrity of the witnesses is, according to Aboo Huneefah, to be held sufficient."<sup>1</sup>

The confession required to establish a charge of whoredom, in defect of testimony, must be made by a person of sound mind and mature age, four times, at four different sittings of the *Kázee*; who is directed to turn the party away, without receiving his (or her) confession, the first, second, and third time; and is authorized to suggest a denial, or the mention of circumstances which may exculpate, or absolve from the legal penalty. A person confessing whoredom may also, at any time, retract his confession, even during the infliction of the punishment; and if his sentence be founded upon it, he must be discharged.<sup>2</sup> A confession, though repeated four times, before any other person than the *Kázee*, is insufficient for conviction.<sup>3</sup> The terms of a confession, as well as of testimony taken before the *Kázee*, must be clear and positive; and must expressly specify the crime of *Ziná*.<sup>4</sup> A confession made in a state of intoxication is invalid.<sup>5</sup> As it also is if any compulsion be used to obtain it.<sup>6</sup> Conviction of *Ziná* cannot be founded, partly on confession, partly on evidence. And according to some authorities, the testimony of four witnesses is not sufficient to convict, with a single confession.<sup>7</sup> If a man confess whoredom, and afterwards plead that he is not *Mohsun*, his plea is to be admitted, and he is to be scourged, instead of suffering lapidation.<sup>8</sup> There is no difference between *Zimmes*, slaves, and free *Mooslims*, with respect to confessions.<sup>9</sup> A man's confession of whoredom with a lunatic woman, or a girl, subjects him to *Hudd*. But a woman's confession of *Ziná* with a madman, or with a boy, does not subject her to the stated punishment.<sup>10</sup> If one party confess whoredom, and the other allege marriage, *Hudd* is stayed, and the man is answerable for the woman's dower only.<sup>11</sup>

Confession of parties, under what restrictions, sufficient to establish a charge of whoredom

In a case of conviction upon evidence, if the witnesses or any one of them, decline to stone first, the sentence of lapidation cannot be put in execution.<sup>12</sup> If a convict fly after receiving part of his punishment, and be immediately re-apprehended, he is to suffer the remainder of his sentence.<sup>13</sup> But if he be seized after an interval of some days, the further punishment is not to be enforced.<sup>14</sup> Lastly, if a man have been guilty of whoredom in several instances; and be punished for one, he is not liable to additional punishment for the remainder. This is declared in the *Hidáyah*, with a reason, in

Circumstances which prevent execution of a sentence of lapidation.

One punishment sufficient for all past instances.

<sup>1</sup> Trans. of *Hid.* vol. 2, p. 4. The evidence required to establish a charge of *Ziná* is also mentioned in the *Tubeen*, *Moheet*, *Mubsoot*, *Itábeeyah*, and other works quoted in the *F. A.*

<sup>2</sup> Trans. of *Hid.* vol. 2, p. 5 to 8. Also *Tuhávee*, *Shumunee*, *Jouhurah-i ný-yurah*, *Buhr-i-ráyik*, and *Moheet*, quoted in *F. A.*

<sup>3</sup> *Tubeen*, quoted in *F. A.*

<sup>4</sup> *Fut hool Kudeer*, quoted in *F. A.*

<sup>5</sup> *Buhr-i-ráyik*, quoted in *F. A.*

<sup>6</sup> *Khuzánut ool Moofteen*, quoted in *F. A.*

<sup>7</sup> *Káfée*, *Fut hool kudeer*, and *Kázee Khán*, quoted in *F. A.* A difference of opinion is stated, between *Imám Mohummud* and *Aboo Yoosuf*, if the single confession be after judgment; the former maintaining that *Hudd* should be enforced, the latter that it should not. But (strange as it appears that one corroborative confession should diminish, instead of strengthening, the testimony of the four witnesses) it is said that both agree, a sentence of *Hudd* cannot be passed after a single confession.

<sup>8</sup> *Eezáh*, quoted in *F. A.*

<sup>9</sup> *Mubsoot*, quoted in *F. A.*

<sup>10</sup> *Eezáh*, quoted in *F. A.* See the case more fully stated, with the grounds of decision, in Trans. of *Hid.* vol. 2, p. 30, 31.

<sup>11</sup> *Moheet*, quoted in *F. A.* See also Trans. of *Hid.* vol. 2, p. 33.

<sup>12</sup> *Fut hool kudeer* and *Tubiéen*, quoted in *F. A.*

<sup>13</sup> *Mubsoot*, quoted in *F. A.*

<sup>14</sup> *Itábeeyah*, quoted in *F. A.*

explanation, that the design of the punishment in this case being to deter from the commission of the same offence; and it being probable, or at least possible, that this end may be attained by the infliction of it in one instance; it is not lawful to repeat the punishment for any other past offence.<sup>1</sup>

Second species  
of *Hudd*, or  
*Shoorb*.  
Definition.  
and to what it  
amounts if it is ap-  
plicable.

The second species of *Hudd*, according to the usual arrangement in books of Mohummudan law, is for *Shoorb*, literally drinking, or liquor; but here implying the drinking of wine (*Khumr*) in any degree; and of other prohibited liquors, so as to be intoxicated by them. *Khumr*, of which the use is absolutely forbidden in the *Korán*, and to declare the legality of which incurs the penalties of apostacy, is defined by Aboo Huneefah to be the crude fermented juice of the grape, which after gathering foam and settling, possesses an inebriating quality. Aboo Yoosuf and Imám Mohummud consider the term applicable to the fermented juice, in a spirituous state; whether it have gathered foam or not. There are three other descriptions of prohibited liquor; denominated *Bázik*, *Sukur* and *Nukee-á-i Zubeeb*. The first is the juice of grapes boiled, until any quantity less than two thirds evaporate. It is also called *Monussuf* when half is evaporated. The second is made by steeping fresh dates in water till they sweeten it. The third is produced by steeping raisins in water, till it becomes fermented and spirituous. The illegality of these liquors being matter of opinion, the drinking them is not punishable, unless it be in a degree to occasion intoxication. If the juice of grapes be boiled, until two thirds evaporate, in which state it is called *Mosullus*, and if drank, not with a view of pleasure, but to invigorate the constitution, it is held lawful by Aboo Huneefah, and Aboo Yoosuf; though not by Imám Mohummud, Shafi'ee and Málik. Liquor produced from honey, wheat, barley, or millet, and not drank to excess, is also esteemed lawful by the two former; and Aboo Huneefah is said to have been of opinion that even intoxication, proceeding from such liquor, is not subject to the penalty of *Hudd*. But on the authority of Imám Mohummud, it has been ruled that intoxication, from any of the liquors specified, as well as from *Nubeez* (a fermented liquor made by steeping dates, raisins, &c. in hot-water) does not incur the stated punishment. A difference of opinion exists between Aboo Huneefah, and his two disciples, as to the degree of intoxication which is punishable. The former maintains that the party must be so inebriated, as not to understand what is said to him; or to distinguish a man from a woman. The latter consider penal drunkenness to be sufficiently established by confused and incoherent speaking, the usual sign of inebriety; and this opinion is most generally received.<sup>2</sup>

What degree  
of intoxica-  
tion is punish-  
able

Penalty for  
drinking wine,  
or intoxica-  
tion with other  
liquors

The legal penalty for drinking wine, or being intoxicated with the other prohibited liquors specified, is, if the offender be a free man or woman, eighty stripes with a *Tázeenah*, to be inflicted in the same manner as provided in the case of whoredom; or forty stripes if the drinker be a slave, whether male, or female.<sup>3</sup> None but persons of the Mosulman faith, however, and among those such only as are adult, sane, and capable of speech, are liable to the stated penalty.<sup>4</sup>

By what evi-  
dence the of-  
fence is es-  
tablished

The crime is established by the voluntary confession of the party; or by the testimony of two witnesses. But it is necessary that the offender be seized whilst in a state of intoxication, or whilst his breath yet smells with

<sup>1</sup> See Trans. of *Hid.* vol. 2, p. 73.

<sup>2</sup> See Trans. of *Hid.* vol. 2, p. 53. Chap. on punishment for drinking; and vol. 4, p. 154. Book on prohibited liquors. The *Futáwá* of Kázee Khán, and *Sirájee yah*, are quoted in the *F. A.* to the same effect.

<sup>3</sup> Trans. of *Hid.* vol. 2, p. 56. Also the *Kunz* and *Siráj-i-wuhháj*, quoted in *F. A.*

<sup>4</sup> *Buhr-i ráyik*, quoted in *F. A.*

liquor; and that he be immediately brought before the *Kásee*: neither his confession, or the evidence against him, being sufficient for his conviction, according to the doctrine of Abou Huneefah and Abou Yoosuf, (though it is, in the opinion of Imám Mohummud, as in cases of whoredom, at any time not exceeding one month) after the smell of the liquor has ceased; unless he were seized at a distant place, when intoxicated, or when still retaining the smell of the liquor, and the delay in bringing him before the *Kásee* has proceeded from the remote situation of the place of seizure. The smell of the wine however, or even the vomiting it, without the testimony of witnesses, or the drinker's confession, is not enough for conviction; because, as stated in the *Hidáyah*, "The smell alone leads to but a very uncertain conclusion; as this may proceed either from the person having drank wine; or from his having sat among wine drinkers, from whom he may have contracted the smell; and it is also possible that wine may have been administered to him by force, or menaces, in which case no punishment is incurred." A confession made during a fit of intoxication is invalid. And if a person confessing the drinking of wine, or other prohibited liquor, afterwards retract his acknowledgment, it is not admissible to convict him for punishment; which, with respect to wine-drinking, is declared to be purely a divine, or in other words, a public right.<sup>1</sup> It is further provided, that the stated punishment is not to be inflicted whilst the offender is in a state of intoxication, that determination, the end proposed, may be duly obtained.

The third subordinate head of *Hudd* is for *Kuzuf*, or slander of whoredom; which, according to the legal definition of the term, is committed by a false imputation of whoredom, against a man or woman, who possesses the qualifications of *Ihsán*; viz. is free, sane, adult, of the faith of *Islam*, and of chaste reputation.<sup>2</sup> Equivocal expressions are construed according to the apparent intention of the speaker; and if they clearly indicate a charge of whoredom, incur the punishment of slander, unless the truth of the charge be admitted or proved.<sup>3</sup> No penalty however is due for imputing whoredom to a person who has actually committed that offence, whether in the particular instance stated, or in any other; <sup>4</sup> provided the fact be established, either by the positive testimony of four competent witnesses; or by the voluntary acknowledgment of the party accused; or by the evidence of two men, or one man and two women, in proof of a confession of the fact.<sup>5</sup>

Punishment not to be inflicted during intoxication.

Third head of *Hudd*, or *Kuzuf*. Definition of the offence.

<sup>1</sup> Trans. of *Hid.* vol. 2. p. 55, 56, also the *Siráj-i Wahháj*, and *Zuheereeyah*, quoted in the *F. A.*

<sup>2</sup> Trans. of *Hid.* vol. 2, p. 60, and commentary of Tuhávee quoted in *F. A.* This definition of *Ihsán*, with reference to slander, differs from that before stated respecting whoredom, in the substitution of *chastity* (which, according to Tuhávee, consists in freedom from any adulterous, dubious, or illegal connection) for the *consummation of a lawful marriage*. The reason given in the *Hidáyah* for requiring chastity in the accused, to maintain a charge of slander, is—"because no scandal attaches to any other persons than those who are of chaste repute; and the accuser of an unchaste person moreover speaks truly."

<sup>3</sup> Several examples of words constituting, and not constituting, a penal imputation of whoredom, are given in the *Hidáyah*; and many more in the *Zuheereeyah*, *Futhool Kudeer*, *Moheet*, *Mubsoot*, *Jouhurah-i-Nýyurah*, and other authorities quoted in the *F. A.* But it does not appear necessary to specify them.

<sup>4</sup> *Mubsoot* of Surukhsee and *Zuheereeyah*, quoted in *F. A.* It is added from the *Eezáh*, that the witnesses of the accused, to prove the truth of his allegation, are to be heard, if they attend after his conviction, or even after the execution of a sentence against him has commenced; and that, on their establishing the charge, no further punishment for slander is to be inflicted.

<sup>5</sup> *Mubsoot*, quoted in *F. A.*

Penalty for slander, when established.

Evidence required to prove accusation of slander.

Infidel subjects, and residents under protection, liable to same penalty, as Mosulmans.

Effect of punishment for slander upon future testimony of the parties.

What persons entitled, or not, to prosecute a charge of slander.

Differences between rules of *Hudd*, for *Zina*, and *Kizas*.

The penalty for slander, when legally established, is declared in the *Korán* to be eighty stripes (which are to be inflicted in the manner already described under the punishment of whoredom) if the offender be free; or forty stripes if he (or she) be a slave.<sup>1</sup> But as the *huk ookúbd* (right of the individual) is blended with the *Huk oollah* (right of God, or public right) in a case of slander;<sup>2</sup> it is requisite that the slandered person if living, or if dead, that the person whose lineage is affected by the imputation, prosecute the charge and demand the stated punishment. The free confession of the accused, or the evidence of two credible male witnesses, is required to prove the accusation. But, in consideration of the private right included in the prosecution, the retraction of a confession, once made, is not permitted.<sup>3</sup> An infidel slandering a Mosulman, who possesses the requisite of *Ihsán*, is liable to the stated penalty. And it is declared in the *Hidáyah*, that "if an infidel residing under protection in a Mohummudan state, slander a Mosulman, punishment for *Kuzuf* is incurred by him; because, in punishment for slander, individual rights are concerned; and the protected infidel has undertaken to pay due observance to the rights of individuals. As he himself desires to be protected from injury; it follows that he undertakes not to offer injury to others; and also that he subjects himself to the legal consequences, if he should." If a Mosulman, or infidel, suffer the prescribed punishment for slander, his testimony is for ever afterwards inadmissible; unless with respect to the infidel, he subsequently embrace the Mohummudan faith; in which case, the competency of his evidence is restored, with the addition of being valid against Mosulmans which it was not during his infidelity.<sup>4</sup>

A son is not entitled to demand punishment for slander against his father, or mother; or his paternal or maternal ancestors; nor a slave against his master; on the principles before stated under the head of *Kizás*.<sup>5</sup> The execution of a sentence of *Hudd* for slander is also stayed by the death of the slandered person; or, if he die, without having prosecuted for it, no one can claim it, on his account, after his demise.<sup>6</sup> If the party slandered be defunct at the time, his or her father, mother, children, or any paternal ancestor or lineal descendant, may prosecute, provided that injury be shown to arise to the lineage of the prosecutor from the slander complained of. The son's son, and the daughter's son, have the same right of prosecution; but neither can prosecute for slander upon his maternal ancestors. Nor can brothers, or sisters, uncles, or aunts, claim the infliction of *Hudd* for slander on each other respectively.<sup>7</sup> In this, as in other cases of *Hudd*, the charge may be prosecuted through a *Vakeel*, or constituted agent, according to the opinion of Abou Huneefah and Imám Mohummud. But it is generally agreed, that the claimant must attend in person for the execution of the sentence.<sup>8</sup> The following differences between the rules of *Hudd* for *Zina* and *Kuzuf* are stated by Kázee Khán. 1. *Hudd* for slander is not prevented by a lapse of time, as it is for whoredom and drunkenness. 2. *Hudd* for slander is not inflicted

<sup>1</sup> Trans. *Hid.* vol. 2, p. 59, and *Fut hool Kudeer* quoted in *F. A.*

<sup>2</sup> Trans. of *Hid.* vol. 2, p. 64. Shafí'ee contends that the right of the individual is superior to the right of God, the former being necessitous, while the latter is not. Abou Huneefah and his two disciples hold the right of the Creator to prevail in preference to that of his creatures.

<sup>3</sup> Trans. of *Hid.* vol. 2, p. 64. And the *Ikhtiyár*, and *Káfee*, quoted in *F. A.*

<sup>4</sup> Trans. of *Hid.* vol. 2, p. 72. And *Tuhávee*, quoted in *F. A.*

<sup>5</sup> Trans. of *Hid.* vol. 2, p. 63. and *Ezák*, quoted in *F. A.*

<sup>6</sup> Trans. of *Hid.* vol. 2, p. 63. and *Fut. Kurkhee* quoted in *F. A.*

<sup>7</sup> *Tumurtashee*, Kázee Khán, *Moheet*, and *Tuhávee*, quoted in *F. A.*

<sup>8</sup> *Fut hool Kudeer*, quoted in *F. A.*

without the claim of the slandered person ; but for whoredom it is. 3. It is stated, as a further difference, in the *Fut'h ool Kudeer*, that the *Kázee* may found a conviction of slander upon his own knowledge, obtained during his office ; though not upon his previous knowledge, without additional evidence. \* In the *Eezáh* it is declared commendable to relinquish the prosecution of a charge for slander, and the *Kázee* is authorized to advise the complainant to renounce his claim, at any time before the charge is established. It is further stated in the *Hidáyah*, that a single punishment for slander, as for whoredom and wine-drinking, includes all past offences ; the design not being private satisfaction (as maintained by Sháfi'ee, on the doctrine that the right of the individual predominates in cases of slander ; ) but, on a principle of public justice, to deter, by an example, from a repetition of the offence in future. †

Relinquish-  
ment of charges for slander declared commendable.  
A single punishment includes all past offences.

*Surikah* or larceny, the last offence specifically provided for under the general head of *Hudd*, is distinguished as *Surikah-i-Soghrá*, and *Surikah-i-Kobrá*, or literally, *Petit and Grand Larceny* ; but not in the sense for which these terms are used under the English law, to denote the stealing of goods not exceeding, or exceeding, the value of twelve pence. As applied by the Mohummudan law, they correspond more nearly, though not exactly, with the distinction of *theft* and *robbery* ; the former designation implying secret larceny, by stealth ; the latter, open larceny, by force and violence.

*Surikah*, or larceny, distinguished as *Soghrá* and *Kobrá*.

The legal meaning of *Surikah* is defined, in the *Hidáyah*, to be "a responsible (viz. a sane and adult) person's wrongfully and furtively taking the undoubted property of another, when such property is in due custody ; and the value of it not less than ten *dirms*." ‡ The furtive or clandestine taking, in cases of highway robbery, is explained to respect the *Imám*, or chief magistrate, whose province it is to guard the highways by means of his assistants ; and, in cases of private larceny, is stated to respect the individual proprietor, or his representative. The secrecy, or stealth, included in the primitive sense of the word *Surikah*, is further explained as applicable to the beginning only of the act, when a theft is committed during the night ; it being usual for a thief to enter or break into a house secretly, at night, and then to take away the property by violence, as the owner cannot obtain ready assistance. But in the day time, when aid can be easily procured, and when therefore the forcible seizure of property is seldom attempted, the condition of furtively taking away includes both the beginning and end of the transaction, to establish a charge of theft. § The custody requisite for maintaining such charge, or an accusation of robbery, is of two kinds. 1. *Hirz ba Mukám*, or custody of place, being such place as is generally used for preserving the property contained in it ; whether a house, shop, tent, or other receptacle : to constitute theft from which it is not material that the door be shut ; but it is essential, to complete the crime, that the property be taken out of the place of custody. 2. *Hirz ba Háfiz*, or personal guard ; from the watch of a person over the property, which, if near to him and within his sight, is considered to be under his custody, though on a road or plain ; and whether the keeper be asleep or awake. The actual seizure of it, when so watched, is further deemed sufficient to establish the crime of theft, whether

Legal definition of *Surikah* ; and application of it to charges of theft, and robbery.

\* See Trans. of *Hid.* vol. 2, p. 73, 74.

† See Trans. of *Hid.* vol. 2, p. 22, where the definition is given somewhat more at length. It is also quoted in the *F. A.* from the *Ikhtiyár* in nearly the same terms.

‡ *Hid.* Trans. vol. 2, p. 83, and *Nuhr-i-Fáyik* quoted in *F. A.* The case of secretly breaking into a house at night, and forcibly bringing out property under resistance from the owner, is expressly stated in the *Moheet* of Surukhsee, as subject to the prescribed penalty of amputation ; but that punishment is declared not to be incurred, if the same offence were committed by day.



the property be taken away, or not.' The standard of value for inflicting the punishment of theft is stated in the *Hidāyah* to be fixed at ten *dirms*, (or from two to three rupees according to different calculations) on the authority of a tradition from the prophet importing that "there is no amputation for less than a *deenār* or ten *dirms*,"<sup>1</sup> The *dirm* of the highest current value is to be used in the computation; and in cases of doubt, the property is to be appraised by two persons duly qualified for the purpose.<sup>1</sup>

Evidence required to establish a charge of theft. And instruction to the *kāzee* in trying such charge

A charge of theft is established by the voluntary confession of the party accused; or by the testimony of two credible male witnesses. A single confession is sufficient, according to the opinion of Aboo Huneebah and Imām Mohummud; though Aboo Yoosuf requires a repetition of it.<sup>4</sup> But the *Kāzee*, with a view to prevent the infliction of the prescribed punishment, is authorized to advise the thief not to confess.<sup>5</sup> A retraction of confession is also admissible (if there be no other proof) to stay a sentence of *Hudd*, though not to save from a restitution of stolen property.<sup>6</sup> A confession of theft committed on a person or persons unknown is insufficient for conviction.<sup>7</sup> If two or four persons confess a joint theft, and half the number retract, the remainder cannot be convicted for punishment on their confession only.<sup>8</sup> Nor can a conviction be founded upon a confession of stealing property, of which part is declared by the person robbed to belong to the thief.<sup>9</sup> But a confession of having committed a theft, with another person not apprehended, is conclusive for the conviction of the party confessing, without the attendance of the other, provided he acknowledge the taking ten *dirms* or more.<sup>10</sup> The confessions of infants, before they have shown signs of maturity, are invalid;<sup>11</sup> as are likewise all confessions extorted by compulsion.<sup>12</sup> If the person accused of theft deny the charge, it is incumbent upon the accuser to prove it; or, in defect of proof, the accused may be put upon his oath, to exculpate himself; if he decline which, he may be made answerable for the property stolen; but is not liable to punishment; nor, according to the *Futūwā-i Koobrá* is it legal, in any case, to beat him, without conviction; though the jurist Aboo Bukr Aāmush is cited, as declaring it to be at the discretion of the Imām, when he may suspect the accused of being the thief, and of having the stolen property in his possession, to chastise him, for the purpose of making him confess and deliver up the property.<sup>13</sup> The evidence of women is not admissible, in any case, to ground a sentence of *Hudd*. But the testimony of one man, and two women, may be admitted to establish a right to stolen property, as in other cases of private right. The *Kāzee* is directed to be particular in his examination of the witnesses, as to time, place, and circumstances; as well as respecting the value of the property stolen, if it be

<sup>1</sup> *Hid.* and *Sirāj-i-wuhhāj*, quoted in the *F. A.*

<sup>2</sup> Shafi'ee contends that the standard is the fourth of a *deenār*; and Málík supposes it to be three *dirms*; as the lowest value of a shield; for which amputation was inflicted in the time of the prophet. See their argument, and that of Aboo Huneebah and his followers. Trans. of *Hid.* vol. 2, p. 84.

<sup>3</sup> *Moheet* and *Tubeen* quoted in *F. A.*

<sup>4</sup> See their different opinions in Trans. of *Hid.* vol. 2, p. 86.

<sup>5</sup> *Zuheereyah*, quoted in *F. A.*

<sup>6</sup> *Hid.* vol. 2, of Trans. p. 86, and *Ikhtiyār* quoted in *F. A.*

<sup>7</sup> *Zakheerah*, quoted in *F. A.*

<sup>8</sup> *Itabee yah*, quoted in *F. A.*

<sup>9</sup> *Moheet*, quoted in *F. A.*

<sup>10</sup> *Moheet*, quoted in *F. A.*

<sup>11</sup> *Moheet*, quoted in *F. A.*

<sup>12</sup> *Zaheere yah*, quoted in *F. A.* A modern opinion, in favor of the validity of a forced acknowledgment is also noticed; but it is not deemed authoritative.

<sup>13</sup> *Zakheerah*, and *Fut. Koobrá*, quoted in *F. A.*

not produced in court. He is also enjoined to ascertain their credit, if it appear doubtful. If the accused be a Mosulman, the witnesses to prove the charge against him must be of the same persuasion; and if two infidels depose to a theft jointly committed by a Mosulman and an infidel, their evidence is declared insufficient to convict either. It is further declared that if two witnesses depose to the commission of a theft by one person, and two to its having been committed by another person, neither can be convicted on their evidence, though the party robbed should charge one of them.<sup>1</sup> If two witnesses depose to a confession of theft by the accused; and he deny; or be silent; such evidence is not sufficient for his conviction.<sup>2</sup> Nor is a confession of having taken property, without an express declaration that it was stolen. And both the prosecutor and witnesses are permitted to use terms, in their depositions, which may secure the right of property to the owner; without subjecting the party accused to the punishment of theft.<sup>3</sup>

The penalty to be adjudged on a legal conviction of the crime of theft, when the property stolen by the convict amounts to ten *dirms*, is, for the first offence, amputation of the right hand, and for the second, amputation of the left foot. In the event of any further repetition of the offence, he is to be imprisoned till he show signs of reformation, or eventually for life. And discretionary punishment (*Tazeer* or *Seelusat*) extending to death, may be inflicted, if the circumstances of the case appear to require it.<sup>4</sup> If the left hand, or right foot, of the convicted thief be paralytic; or have been lost by accident; his right hand, or left foot, is not to be amputated; that he may not be deprived of the power of holding, or walking; or of the use of two members on the same side. The rule is equally applicable if the thumb, or any two fingers, of the left hand, be lost or useless, as in such a state the hand is considered incapable of performing its office; but this inability is not supposed, when one finger only of the left hand is lost, or useless; and the amputation of the right hand is not therefore prevented by it.<sup>5</sup> Nor is the amputation of the right hand prevented by any paralytic affection of that hand, or any defect in the fingers of it.<sup>6</sup> If however the toes of the right foot have been lost, so as to prevent the party's walking with that foot, amputation of the right hand is not to be adjudged.<sup>7</sup> A previous loss of the left foot does not prevent the right hand being cut off, nor does a previous loss of the right hand prevent amputation of the left foot.<sup>8</sup> If sentence be passed for cutting off the right hand of a thief; and the executioner, either intentionally, or by mistake, amputate the left hand; according to Aboo Huneefeh, no responsibility is incurred; but his two disciples hold the executioner responsible, if his act were intentional.<sup>9</sup> All agree however that no responsibility attaches, if the thief himself put forth his left hand and say, "This is my

Penalty for theft, on conviction, with restrictions on execution of it

<sup>1</sup> *Moheet*, quoted in *F. A.*

<sup>2</sup> *Tatarkhaneeyah*, quoted in *F. A.*

<sup>3</sup> *Sirajee yah*, quoted in *F. A.*

<sup>4</sup> *Hid* vol. 2, of Trans. p. 107, and *Sirajee yah*, quoted in *F. A.* The terms of the latter are "The *Imam* may put the thief to death, for the purpose of *Seelusat*, or exemplary punishment, as he is a practised disturber of the peace." Shafi'ee, on the authority of a tradition from the prophet, which is not admitted by Aboo Huneefeh and his disciples, maintains that the left hand is to be cut off for the third, and the right foot for the fourth, offence.

<sup>5</sup> *Hid*. vol. 2, of Trans. p. 109.

<sup>6</sup> *Tubeen* quoted in *F. A.*

<sup>7</sup> *Mubsoot* quoted in *F. A.* The same bar must be understood, *a fortiori*, to the amputation of the left foot, when the right cannot be used.

<sup>8</sup> *Tuhavee* and *Moheet* quoted in *F. A.*

<sup>9</sup> See their different arguments in Trans. of *Hid*. vol. 2, p. 110.

right hand." And that, as the amputation of the left hand is not the prescribed punishment for theft, the thief remains answerable for the value of the property stolen; which he is not when the right hand is cut off according to law, on a general principle, that amputation and responsibility for property (beyond the restitution of stolen goods forthcoming) cannot be united.

Numerous provisions for dispensing with the punishment of mutilation

But as in other cases of *Hudd*, where the fixed penalty is severe and against the feelings of humanity, numerous provisions have been made by the legislator for dispensing with, or rather evading, the law, by qualifications, restrictions, and conditions; some one of which must so frequently intervene, as to render actual mutilation for theft of rare occurrence; except in cases of enormity, attended with circumstances that appear to justify and require an example of determent.

Examples of cases, in which the penalty is, or is not, incurred.

A person stealing the property of his father, mother, or any of his ancestors; or the property of his son, or any of his descendants; is not liable to amputation; because such kindred are considered to have a mutual right of usufruct in the possessions of each other; as well as to hold a joint custody thereof for reciprocal benefit. For the latter reason also amputation is not incurred for stealing the property of any relation within the prohibited degrees, unless it be taken from a stranger's house, in which case there is a violation of custody; nor is it due for stealing the property of a stranger from the house of such a relation.<sup>1</sup> A husband, or wife, stealing the property of each other, or a slave stealing the property of his master, or mistress, or of his master's wife, or the husband of his mistress, is not liable to amputation; because the thief, in such instances, is at liberty to enter the house, or apartment, of the proprietor; and with respect to man and wife, although they may have distinct places of custody, they possess a mutual usufructuary right in the property of each other.<sup>2</sup> In like manner a master, stealing the property of his slave for whom a ransom is stipulated, or whom he has licensed to trade, is not subject to amputation, unless, in the latter instance, the slave have contracted a debt, in which case his property is considered to be in pledge for his creditor.<sup>3</sup> Amputation is not incurred for stealing property out of a public bath, or from a house of general resort, in the day time; when the custody of such places is questionable. But for thefts in the night time, when strangers are not allowed ingress, the prescribed penalty is to be inflicted.<sup>4</sup> If a guest steal the property of his host, he is not liable to amputation; as he has been allowed to enter the house; and his offence is considered to be rather treachery than theft.<sup>5</sup> Nor is a servant subject to the stated penalty for stealing the property of his employer, out of an apartment to which he is allowed access.<sup>6</sup> In cases of burglary, if a thief break through the wall of a house, enter and take property, and be seized before he has carried it out of the house, amputation is not incurred;

<sup>1</sup> *Hid.* vol. 2, of Trans. p. 111.

<sup>2</sup> *Hid.* vol. 2, of Trans. p. 98. And *Fut h ool Kudeer*, quoted in *F. A.*

<sup>3</sup> *Hid.* vol. 2, of Trans. p. 99. And *Ghāyut ool biyan*, quoted in *F. A.* In the *Sirāj-i-wuhhāj* the same principle is applied to a divorced wife, during the period of her *Idut*: as well as to the case of a thief marrying the woman, whose property he has stolen; even although sentence of amputation should have been previously passed against him. In the *Moheet* a slave's stealing from his master's father or mother, or any of his master's relations within the prohibited degrees, is declared to be exempt from amputation, in like manner as if the master himself had committed the theft.

<sup>4</sup> *Moheet*, quoted in *F. A.* And *Hid.* vol. 2, of Trans. p. 100.

<sup>5</sup> *Hid.* vol. 2, of Trans. p. 102. And *Ikhtiyār*, quoted in *F. A.*

<sup>6</sup> *Hid.* vol. 2, of Trans. p. 102.

<sup>7</sup> *Sirāj-i-wuhhāj*, quoted in *F. A.*

nor is it, if he give the property, at the entrance of the breach, to an accomplice standing without; because the thief who enters the house does not carry out the property, which, previously to his coming out of the house, falls into the possession of another; and the thief who receives and takes away the property has not committed any violation of custody. The whole of the conditions of theft therefore are not found in this instance. But if the thief, who enters the house, throw the property out upon the highway, through the hole made by him, and then take it away, his hand is to be cut off, according to the opinion of Abou Yoosuf; from whom it is further recorded, that if the thief within the house put his hand entirely through the breach, and thus deliver the property to the accomplice without, the former is liable to amputation; as both are, if the thief without put his hand through the breach, into the house, and thus take the property from the other within.<sup>1</sup> The principle which governs the latter case is the same as that of a party of thieves, who enter a place of custody, and some take away the property, whilst the others stand by; in this case, the whole incur amputation, as in robbery by open violence; because the accomplices are ready to aid the perpetrators, and are therefore concerned with them in committing the offence.<sup>2</sup> But according to the *Zâhir oo' ruwâyyât* the violation of custody must be completed, by the entrance of the thief into the place of custody, whenever this may be practicable; and therefore if a person make a breach in the wall of a house, put his hand through, and take out property, without entering the house, he does not incur amputation.<sup>3</sup> If a thief break a hole in a house, and go away, and the owner of the house, though he observe the hole, or though it be visible to passengers, omit to close it; and the thief return another night, and take property from the house; amputation is not incurred. Nor is it for two or more successive thefts, each of less than ten *dirms*, if the owner, after being advised of the first theft, neglect to repair the breach. But if the owner be not advised, the value of the several thefts may be computed collectively.<sup>4</sup> If a person keep his money tied in his sleeve in such a manner that the knot containing it is within the sleeve, and a cut-purse steal it by putting his hand under the sleeve, and tearing away the part which contains the money, he is liable to amputation; as he also is if the knot be tied on the outside, and on being opened the money fall within the sleeve, and is taken from thence by the thief. But if the knot be on the outside and torn away; or on the inside, and opened from without, the penalty is not incurred; the interior part of the sleeve, which is considered the place of custody, not being violated in the two latter instances.<sup>5</sup> If a person steal one of a string of camels, or a load from one of them, he is not liable to amputation; from a doubt whether the camel be in legal custody: unless there be a guard (exclusive of the driver, or rider) for the express purpose of watching the camels; in which case the penalty is incurred: as it also is, if the thief break open a package, and take away its contents, whilst

<sup>1</sup> *Hid.* vol. 2, of Trans. p. 103. And *Fut. Kurkhee* quoted in *F. A.* But it is added that Abou Huneefah, in the case last stated, does not consider either of the parties liable to amputation. The author of the *Nihâyah* also remarks, on the case of a thief throwing effects out of a house, near the breach, and afterwards carrying them away, that the better opinion is against amputation.

<sup>2</sup> *Hid.* vol. 2, of Trans. p. 105.

<sup>3</sup> *Hid.* vol. 2, of Trans. p. 105. Abou Yoosuf maintains that the hand of the thief should be struck off; because he has taken the property out of a place of custody; which is sufficient to constitute theft, without personal entrance.

<sup>4</sup> *Sirâj-i-wuhhâj*, quoted in *F. A.*

<sup>5</sup> *Hid.* vol. 2, of Trans. p. 105. And *Kâfee* quoted in *F. A.*

under personal custody.<sup>1</sup> If some of a party of travellers steal the property of others, at their lodging place, though watched by the owners, the thieves are not liable to amputation; the lodging place being common.<sup>2</sup> If a person enter a house by unlocking the door with a false key, in the day time, and take away the effects when no person is present, he is not subject to amputation. But if any of the family be in the house and not privy to the theft, the prescribed penalty is incurred. In like manner, if the door be open, and the thief enter by day, and steal, he is not liable to amputation. But if the door be shut, though not fastened, and he enter clandestinely and take away property, it is stated in the *Hávee* that he incurs the penalty of theft: as he also does if he enter the house at night, and take away property either by stealth or force, after the hour of evening prayer; unless his entering the house be known, at the time, to the owner.<sup>3</sup> It is further stated in the *Hávee*, that if a herd of kids be collected in a fold, and one or more of them, to the value of ten *dirms*, be stolen from the enclosure, amputation is incurred, whether the owner be present or not. But for cattle stolen from pasture ground, the penalty of theft is not due, unless there be a watchman with them, for the express purpose of guarding them.<sup>4</sup>

Descriptions  
of property,  
for stealing  
which amputa-  
tion is not in-  
curred

Amputation for theft is not incurred on account of things which, in their original nature, were of common use, and which in their actual state, are not esteemed a valuable property; such as wood, canes, grass, fish, fowls, game, brimstone, limestone, red-earth, mud, clay, dung, and similar articles; Aá'éshah, the wife of Mohummud, having declared that in the prophet's time the stated penalty was not inflicted for such petty thefts; and the exemplary punishment of them is not judged requisite; besides which the custody of some of the articles specified is esteemed defective.<sup>5</sup> Nor is amputation incurred for the theft of things which quickly spoil and decay; such as milk, flesh, and fruit (excepting dried dates, or other fruit kept in store) the prophet having expressly interdicted it for these articles.<sup>6</sup> Nor for fruit upon the tree, or grain upon the stalk; these not being considered in custody. Nor for any intoxicating liquor; which is illegal or doubtful property.<sup>7</sup> Nor for a drum, or other musical instrument of small value, and used for amusement only.<sup>8</sup> Nor for a *Korán*, though ornamented; as the custody of it is on account of its contents, not for the binding or ornaments; and moreover the person taking it may plead that his intention was to read it only.<sup>9</sup> Nor for any other book, except a book of accounts, the contents of

<sup>1</sup> *Hid.* vol. 2, of Trans. p. 106. Also the *Siráj-i-wuhháj* and *Zukheerah*, quoted in *F. A.*

<sup>2</sup> *Sirájceyah*, quoted in *F. A.*

<sup>3</sup> *Moheet*, quoted in *F. A.*

<sup>4</sup> *Zukheerah*, quoted in *F. A.*

<sup>5</sup> Trans. of *Hid.* vol. 2, p. 87. Also the *Moheet* and *Káfee*, quoted in *F. A.* But utensils made of wood, Bughdád mats, and other articles of which the workmanship may be more valuable than the utensils, are declared subjects of custody and of theft. Aboo Yoosuf, and Shafi'ee further maintain, that amputation is incurred by the theft of any article to the prescribed value, except mud, clay, and dung.

<sup>6</sup> Trans. of *Hid.* vol. 2, p. 88, And *Siráj-i-wuhháj* quoted in *F. A.* Also the *Zukheerah*, including dried, as well as fresh fruits, in years of scarcity.

<sup>7</sup> *Hid.* Trans. vol. 2, p. 89, and *Tumurtáshee* quoted in *F. A.* with extension of the principle to pork, hawks, and birds in general.

<sup>8</sup> Trans. of *Hid.* vol. 2, p. 89, and 92. But a flute made of any scarce or valuable wood is excepted; and declared to be an object of custody, as held in estimation. The author of the *Moheet* also states a difference of opinion with respect to a military drum, if ten *dirms* in value; as this is not in use for amusement.

<sup>9</sup> *Hid.* vol. 2, of Trans. p. 89, 90. Shafi'ee and Aboo Yoosuf maintain a different opinion.

which not being the object of the theft, the paper, and other materials of which it is composed, are deemed appreciable property.<sup>1</sup> Nor for the door of a mosque, as this is not an object of custody.<sup>2</sup> Nor for a crucifix, chess-board, or chess-pieces, though of gold; as the thief may excuse himself by saying that he took them with a view to destroy them; being things prohibited.<sup>3</sup> Nor for stealing a free-born infant, with ornaments on his body; because a free person is not property; and the ornaments are appendages only; besides which the thief may plead that he took up the infant, when crying, with a view to appease it, or to deliver it to its nurse.<sup>4</sup> Nor for stealing an adult slave; as such an act is ascribed rather to violence, or fraud, than to theft; but if an infant slave be stolen, according to Abou Huneefah, and Imám Mohummud, amputation for theft is incurred; but Abou Yoosuf holds a different opinion, on the ground that a slave, though considered to be property as such, is not property with regard to his original nature, as a man.<sup>5</sup> Nor for a dog, or lynx; because such an animal is free by nature, and there is a difference of opinion respecting the property of them.<sup>6</sup> A breach of trust does not incur amputation; as the article entrusted is not in custody of the proprietor. Nor is it incurred by openly seizing or snatching away a thing, as such an act is not theft; and the prophet has said that "the hand of a plunderer, or snatcher of property, or of a trust-breaker, is not to be cut off."<sup>7</sup> A *Nubbásh*, or stealer from the dead, viz. of a winding-sheet, or other apparel of the dead, is also not liable to amputation, according to Abou Huneefah, and Imám Mohummud; though Abou Yoosuf and Shañíee maintain that he is.<sup>8</sup> If a person steal property of which he is, in part, owner, he is not subject to amputation. And on the same principle, if a creditor steal from the property of his debtor, to the amount of his debt only, amputation is not incurred; as this is deemed to be an enforcement of right, not theft.<sup>10</sup>

Other descriptions of theft which do not incur amputation.

<sup>1</sup> *Hid.* vol. 2, of Trans. p. 92. Also *Siráj-i-wuhháj* and *Moheet*, quoted in *F. A.*

<sup>2</sup> *Hid.* Trans. vol. 2, p. 90. The door of a house is also not considered an object of custody, unless it be separate and portable. See vol. 2, Trans. of *Hid.* p. 93. Also *Tubeen* quoted in *F. A.*

<sup>3</sup> *Hid.* vol. 2, of Trans. p. 90, and *Jouhrah-i-Ny yurah*, quoted in *F. A.*

<sup>4</sup> *Hid.* vol. 2, of Trans. p. 91, and *Siráj-i-wuhháj*, quoted in *F. A.* Abou Yoosuf considers amputation due for stealing the ornaments, if the value of them be ten *dirms*.

<sup>5</sup> *Hid.* vol. 2, of Trans. p. 91. Also *Futh ool Kudeer*, and *Nuhr-i-fáyik* quoted in *F. A.* It is added, in the latter, that the principle stated, relative to an adult slave, is applicable, although the slave be an idiot, or mad or asleep, when he is stolen. It is further stated, in the *Moheet*, that amputation is incurred for the theft of an infant slave worth five *dirms*, with ornaments on him for the value of five *dirms* more.

<sup>6</sup> *Hid.* vol. 2, of Trans. p. 92, and *Tumurtáshee* quoted in *F. A.* It is added from the *Moontuka*, as cited in the *Zukheerah*, that amputation is not to be inflicted, although the dog have on his neck a collar worth a hundred *dirms*.

<sup>7</sup> *Hid.* vol. 2, of Trans. p. 93.

<sup>8</sup> See their respective arguments in Trans. of *Hid.* vol. 2, p. 94. In the *Siráj-i-wuhháj* and *Káfee*, quoted in the *F. A.* the exemption from amputation is extended to a theft of money, or effects, from a coffin, or sepulchre: though a difference of opinion is stated to have obtained in the case of a locked apartment.

<sup>9</sup> *Hid.* vol. 2, of Trans. p. 94, 95. Also *Niháyah* and *Tubeen* quoted in *F. A.* In the former the principle is extended to property taken in war, and declared to be equally applicable to slaves and freemen.

<sup>10</sup> *Hid.* vol. 2, of Trans. p. 95, and *Siráj-i-wuhháj* quoted in *F. A.* There is a difference of opinion, if the creditor, instead of taking money, steal the effects of his

Further requires, for the prosecution of a charge of theft, and punishment of the offender

A sentence of amputation cannot be passed upon a thief, without the attendance and prosecution of the person whose property has been stolen ; or his representative. The reason assigned in the *Hidāyah* is, "because prosecution is essential to the manifestation of theft ; and, with respect to this rule, it matters not whether the theft be established by confession, or by evidence ; because an offence, committed against the property of another, can, in no way be rendered manifest, but by the prosecution of the aggrieved."<sup>1</sup> Besides the owner of the property stolen however, a depositary, a borrower with or without interest, a hirer, an usurper, a partner in concerns of *Mozārūbut*, or *Moostubzá*, a mortgagee, a father, or any other legal guardian, having possession of the stolen article, is declared competent to prosecute in cases of theft.<sup>2</sup> If the stolen property be again stolen from the possession of the first thief, and the latter have suffered amputation, it cannot be demanded against the second thief ; but if the first thief be not convicted, or have not undergone the punishment for theft, it may be enforced, at his requisition, against the second thief.<sup>3</sup> If the stolen property be returned by a thief to the owner before any prosecution is instituted against him, he cannot be sentenced to suffer amputation. But this sentence is not prevented by a restoration of property after the charge is preferred, and evidence adduced in support of it.<sup>4</sup> Execution of a sentence for amputation is stayed however by the gift or sale of the stolen property from the owner to the thief ; whether prior or subsequent to the judgment of the *Kāzee*.<sup>5</sup> Amputation is likewise stopped, if, after the sentence, a reduction in the market value of the stolen article bring it below the legal standard of ten *dirms* ; but this principle does not apply to any other deterioration, from damage to the property, or any cause excepting a fall of price.<sup>6</sup> It is declared in the *Hidāyah* that "if, after witnesses bearing evidence to a theft, the thief plead that the article, alleged to have been stolen, is his own property ; his hand is not to be cut off ; although he produce no evidence in support of his plea."<sup>7</sup> Shāfi'ee justly objects to this doctrine, "that, every thief has it in his power to plead the property being his own ; and therefore if punishment be remitted on such a plea, the door of it must be altogether closed." But the *Huneeffeeyah*

debtor : as he is not at liberty to seize and dispose of such without the debtor's consent. But Abou Yoosuf contends that the creditor may seize the goods of his debtor, to obtain his right, or by way of pledge ; and Abou Huneefeh and Imām Mohummud admit the plea to be sufficient for remitting the punishment of theft, on the ground of Abou Yoosuf's opinion.

<sup>1</sup> Trans. of *Hid.* vol. 2, p. 112. Also *Zād ool fakhā* quoted in *F. A.* In the latter, Abou Yoosuf is stated to have maintained an opinion, that a thief might suffer amputation whether the person robbed be present or not. And a similar opinion is noticed in the Persian and English Translations of the *Hidāyah* (but not in the Arabic original) as entertained by Shāfi'ee when the thief is convicted on his own confession.

<sup>2</sup> *Hid.* vol. 2, of Trans. p. 112, and *Kāfee* quoted in *F. A.* Shāfi'ee and Zoofur deny the right of prosecution to any except the proprietors.

<sup>3</sup> See the reasoning upon which this distinction is founded, in Trans. of *Hid.* vol. 2, p. 115.

<sup>4</sup> *Hid.* vol. 2, of Trans. p. 116. Also *Kāfee* quoted in *F. A.* Abou Yoosuf maintains that amputation may be adjudged, whether the property be restored before, or after, the accusation.

<sup>5</sup> *Hid.* vol. 2, of Trans. p. 116. Also *Futūh ool Kudeer* quoted in *F. A.* Shāfi'ee and Zoofur (with Abou Yoosuf according to one report) differ from the opinion stated. See the argument in Trans. of *Hid.*

<sup>6</sup> *Hid.* vol. 2, Trans. p. 117, and *Moheet* quoted in *F. A.*

<sup>7</sup> Trans. of *Hid.* vol. 2, p. 118. Also *Moheet*, quoted in *F. A.* in which the principle is first stated with respect to a case of confession ; and extended to one founded upon evidence ; perhaps by inadvertency.

doctors reply, that "doubt occasions the remission of punishment; and doubt is established by the plea, since it may possibly be true." They add that Shâfi'ee's objection is of no weight, "because retraction and denial are admitted after confession, although a person confessing has it always in his power to retract and deny." But this reasoning, however applicable to confessions, when there may be no other proof, is obviously inapplicable to a case established by evidence; and Shâfi'ee's objection to the prevalent doctrine therefore remains, as noticed by Mr. Hamilton, "altogether unanswered:" or, at least, unrefuted. The same rule is applied in the *Hidâyah* to the case of two persons confessing a theft, one of whom afterwards pleads that the property was his own. In this case, it is stated, "amputation is not inflicted upon either; because the retraction is admitted with respect to the person retracting; and this gives rise to a doubt in regard to the other person; since theft is confessed by each of them as a joint act."<sup>1</sup> Evidence of a theft jointly committed by two persons, one of whom only is present and on trial, will however convict the one present, without waiting the attendance of the absentee.<sup>2</sup> On a trial for theft, if the person whose property is said to have been stolen, declare, even after conviction and sentence, that the property belonged to the party accused, and was held in trust for him; or that the witnesses against him have given false evidence; or (if he have confessed) that his confession is erroneous; or make any other declaration, whereby a doubt can arise of the guilt and legal conviction of the prisoner, he is not to suffer amputation.<sup>3</sup> Other cases, in which a sentence of mutilation, or the execution of it, is prevented, are detailed in the *Futâwâ-i Aalumgeeree*; but a further specification of them appears unnecessary. It will be sufficient to add, that any stolen property found in the possession of a thief must be restored to the owner; and that the latter has an option to demand the value of his property, or the prescribed punishment, previously to execution of the sentence; but after suffering amputation, the thief is not further answerable for the property.<sup>4</sup> Any sale or gift of stolen property by the thief is however declared null and void. And if another person, after punishment of the thief, destroy or consume it, he is answerable to the owner for the value of it.<sup>5</sup> One punishment for theft, by amputation, as in other cases of *Hudd*, includes all past instances; but does not preclude a further punishment for any future repetition of the offence; as far as the restrictions before stated, concerning amputation, may admit of it.<sup>6</sup>

Stolen property forthcoming must be restored to the owner; who, previously to the thief's being punished, may demand from him the value of property taken, but not afterward. Sale or gift of stolen property invalid. And possessors answerable to the owner. One amputation for theft, includes all past instances.

*Surikah-i-kobrá*, or, as it is otherwise termed, *Kitâ ool tureek*, meaning literally, *cutting off the highway*, and technically, *highway robbery*, is thus defined in the *Hidâyah*. "When a party go forth, with force capable of resistance, for the purpose of committing robbery; or when a single person goes forth with that intent, prepared for resistance, under confidence in his strength and courage; the party so acting is called *Ruhzun*, in the Persian language, and *Kitâ ool tureek* in the Arabic." In the *Zâhir oo ruwâ'yât* and *Tâtârkháneeyah*, cited in the *Futâwâ-i Aalumgeeree*, the following circumstances are mentioned, as requisite to the enforcement of the law against a *Kitâ ool tureek*, or highway robber. 1. That by himself, or with

*Surikah-i-kubra*, also called *Kitâ-ool tureek*, how defined: and what circumstances requisite for enforcing penalty of it.

<sup>1</sup> Trans. of *Hid.* vol. 2, p. 118, with a verbal alteration.

<sup>2</sup> *Hid.* vol. 2, of Trans. p. 118.

<sup>3</sup> *Moheet*, quoted in *F. A.*

<sup>4</sup> *Hid.* vol. 2, of Trans. p. 122, with *Moheet* and *Sirâj-i-wuhhâj*, quoted in *F. A.* Shâfi'ee maintains that satisfaction for stolen property is due, in addition to the punishment of amputation.

<sup>5</sup> *Moheet*, and *Eezâh*, quoted in *F. A.*

<sup>6</sup> *Hid.* vol. 2, of Trans. p. 124. And *Eezâh* quoted in *F. A.*



his associates, he have power and force sufficient to overcome any opposition from travellers, and to stop their passage; whether he be armed with a mortal weapon, or with a large staff, or with a stone; or any thing else. 2. That he commit the act charged, without, and at a distance from, any city. In the *Yunabee* it is stated that, to constitute the crime of highway robbery, it must not take place between two cities, towns, or villages; and that there must be the distance of a journey, of three days and three nights, between the robbers and a city. But Abou Yoosuf declared, that he would convict of highway robbery, though within the distance of a journey from a city, or even within a city, if it were a night robbery, committed on the highway. And *Futwás* are passed according to this opinion.<sup>1</sup> 3. That the crime be perpetrated within the limits of a Mosulman state. (*Dár ool Islám*). 4. That all the conditions of the minor species of larceny (*Surikah-i-soghrá*) be found in this species also; and that all the robbers be strangers to the party or parties robbed; as well as persons legally subject to punishment. 5. That the robbers be seized by the *Imám* before they repent; as well as prior to a restoration of property to the person robbed.

Four descriptions of robbers specified in the *Hidáyah*, with the penalties incurred by them respectively.

Four descriptions of highway robbers are specified in the *Hidáyah*, with the penalties incurred by each, upon conviction, according to their respective degrees of criminality. First, Those who are seized before they have robbed, or murdered any person, or put any person in fear. Secondly, Those who have committed robbery only; whether upon a Mosulman, or infidel subject.<sup>2</sup> Thirdly, Such as have perpetrated murder without robbery. Fourthly, Such as have committed both robbery and murder. Of these descriptions, the first are to be imprisoned, until by their appearance and demeanor they show evident signs of contrition. The second are to suffer amputation of the right hand and left foot; provided the property taken be of such value, as, when divided amongst the whole of the robbers, amounts to ten *dirms* for each. The third class are to suffer punishment (*Hudd*) of death; and as it is inflicted by the right of God, for public example, (in opposition to the private right of *Kisás*) the forgiveness of the heir of the slain is of no avail. With respect to the fourth and last class, it is optional with the *Imám*, either to cut off a hand and foot, and then put them to death; or he may put them to death at once, without amputation. He may also order them to be crucified.<sup>3</sup>

<sup>1</sup> The opinion of Abou Yoosuf, as stated in the *Hidáyah*, is, that "punishment is incurred by him who commits a robbery without the precincts of a city, although it be in the neighbourhood, because there no assistance can be had. And if robbers make an affray in a city, during the day, with mortal weapons; or during the night, either with mortal weapons, or with sticks and stones; they are to be accounted highway robbers; because mortal weapons are too quick in their effect to admit of assistance coming; and in the night assistance comes slowly." But it is objected by Abou Huneefah and his followers, "that highway robbery signifies attacking passengers upon the highway; which does not apply to cities or inhabited places in their vicinity, because it is evident that in such places assistance may be procured." The robbers described are not therefore punishable under the law of *Hudd* as highway robbers; though they may be imprisoned and corrected, and may be compelled to make restitution of any property plundered by them. Moreover, if they have slain any person they may be prosecuted by the heirs for *Kisás*. See Trans. of *Hid.* vol. 2, p. 137.

<sup>2</sup> It is restricted to these because the property of an alien not being under permanent protection, the law of *Hudd* does not extend to it.

<sup>3</sup> *Hid.* vol. 2, of Trans. p. 180. *Imám* Mohummud restricts the option of the *Imám* to immediate death, or crucifixion: and does not admit its extension to amputation, in addition. See the argument on this point, as well as whether the crucifixion should be after, or before, death, in Trans. of *Hid.* The stated penalties are also quoted from the *Kafée*, in the *F. A.* with the addition of *Tázee* to imprisonment, in the first case, of seizure before robbery.

It is further stated in the *Hidāyah*, that if a robber, in the predicament first mentioned, (viz. who may be seized before he has committed robbery or murder) maim or wound a person or persons, there is no distinct specific penalty (under the provisions of *Hudd*) for the maiming or wounding, but he is liable to retaliation, or the fine of blood, under the rules of *Kisās* for offences short of life, at the demand of the person upon whom the offence has been committed. If the robber have both plundered and wounded, he is to suffer the penalty of amputation (as one of the second description of robbers); and neither fine or retaliation can be demanded for the personal injury; the public punishment, as with respect to property in cases of theft, superseding the enforcement of private satisfaction. In like manner, if a robber suffer death, in execution of a sentence of *Hudd*, nothing is due to the person robbed, beyond a restitution of the property forthcoming, as already stated with respect to theft.<sup>1</sup>

Further case-stated in the *Hidāyah*, of maiming, or wounding, by robbers.

If any one among a gang of robbers commit murder, the whole are liable to the prescribed penalty; "because," says the author of the *Hidāyah*, "the punishment is, in this instance, considered as a penalty for the assault of the whole; which is established by each of them being aiding and abetting to the others."<sup>2</sup> But if any one of the band of robbers be an infant, or a lunatic, or dumb, or a relation within the prohibited degrees of the person robbed, or murdered; or if any of the robbers have a joint interest in the property plundered; or such property be not in legal custody with respect to any one of the robbers; or if the property taken amount not in value to ten *dirms* for each robber; or lastly, if the person robbed or murdered be not a Mosulman, or under the permanent protection of a Mohummudan government; a sentence of *Hudd* is prevented, against any of the party.<sup>3</sup> This sentence is also barred by repentance of the robber before he is apprehended and brought to trial; it being declared in the *Korān*, concerning robbers, that "the fixed penalty (*Hudd*) shall be inflicted upon them, excepting such as repent before the magistrate lays his hands upon them." But the right of the individual, for private satisfaction, holds in this case; under the rules of *Kisās*; and the robbers are responsible for the property taken by them.<sup>4</sup> A robber delivering himself up, with the property, or the value of it, is not to be prosecuted for the stated punishment; nor is any penalty to be inflicted

The whole of a gang of robbers punishable for murder, committed by any one of them. Exceptions, in this and other cases, which bar a sentence of *Hudd*.

<sup>1</sup> *Hid.* vol. 2, of Trans. p. 133. And *Sirāj-i wuhhāj* quoted in *F. A.*

<sup>2</sup> Trans. of *Hid.* vol. 2, p. 133. And *Ikhtiyār*, quoted in *F. A.* The just principle stated is considered by some Mohummudan lawyers, on the authority of Aboo Yoosuf's opinion before cited, to be applicable to all crimes committed by open violence, and by a number of persons assisting and supporting each other; whether on the highway, remote from, or near to, an inhabited place; or within a place inhabited; or in any other place whatever: but according to the prevalent doctrines, this provision of the Mosulman law cannot be applied to robberies committed in any other place, than on, or near, the highway; at a distance from any inhabited place. See Preamble to Reg. 53, 1803.

<sup>3</sup> The provisions for public punishment failing however, the right of private satisfaction is open to a prosecution for *Kisās*. Aboo Yoosuf is of opinion, that the rule stated with respect to infants and lunatics (which is founded on the doctrine of Aboo Huneeffah and Zoofur) should obtain only when the infant or lunatic is the actual perpetrator of the murder or robbery; not when the perpetrator is of mature age, and sound understanding, though there be an infant or lunatic in the party. The same difference of opinion prevails in cases of theft. See the argument at length in Trans. of *Hid.* vol. 2, p. 135. The exemption of a dumb person from punishment, on the ground of his not being able to plead in his defence, is stated in the *Moheet*, as quoted in *F. A.*

<sup>4</sup> *Hid.* vol. 2, of Trans. p. 134.

for an old offence, upon a person, who, long before his trial, has ceased to rob, and follows an honest livelihood.<sup>1</sup>

Third head of  
criminal law,  
*Tāzeer* and  
*See'asut*.  
What offences  
included in it.

It remains only to speak of the third and last general head of Mohummudan criminal law, *Tāzeer* and *See'asut*; or discretionary correction, and punishment. It has been already observed, that this head includes all offences not expressly provided for by the laws of *Hudd* and *Kisās*; as well as the crimes to which specific penalties are attached by the general provisions of those laws, when the particular application of them may be prevented by some circumstance of exception, doubt, or legal defect. But offences of the first description, viz. those not comprized in the stated rules of *Hudd* and *Kisās*, are divisible into two distinct classes. 1. Petty offences of a private nature, or of inconsiderable public detriment, for which the offender is liable to chastisement, with a view chiefly to his (or her) personal correction and amendment. 2. Heinous and flagrant crimes, of dangerous tendency, or extensive injury to society, for which the criminal is subject to capital or other exemplary punishment, with a view to deter others from the commission of the like offence. Cases of exception from the specific penalties of *Hudd* and *Kisās* are also subdivided into two classes. First, when the proof of such crimes having been committed by the accused may not be such as the law requires for a sentence of *Hudd* or *Kisās*, though sufficient to establish a strong presumption of guilt. Secondly, when the accused is legally convicted of the fact, but a judgment of *Kisās* is barred by a remission or compromise of the claim to retaliation; or such judgment, or a sentence of *Hudd*, is prevented by some incidental circumstance, which, as explained under the preceding heads, exempts the convict from the stated penalty, but leaves him subject to discretionary punishment. The two classes last mentioned however are not usually distinguished in the provisions for *Tāzeer*, and the distinction appears material only in considering the evidence requisite to support a conviction and sentence upon presumptive proof.

Definition of  
*Tāzeer*.

*Tāzeer*, which in its primitive sense means *prohibition*, or *restriction*, is legally defined to be "an infliction (*Akoobut*) undetermined by the law, on account of the right of God, as well as for the rights of individuals;" or in other words, for the ends of public, as well as private, justice; and it is declared to be incurred by any offence, whether of word or deed, not subject to a specific legal penalty.<sup>2</sup> In the *Nihāyah*, one of the commentaries on the *Hidāyah*, and quoted by the compiler of the *Futūwā-i-Ahlumgeeree*, *Tāzeer* is defined to be "chastisement less than the penalties of *Hudd*, for offences not subject to *Hudd*." But this restriction is applicable only to the first description of offences above noticed, those of a trivial nature; and, upon other legal authorities, is understood to have a special reference to *Tāzeer* by flagellation; which, in obedience to a tradition from the prophet, implying that "the person who inflicts scourging to the extent of *Hudd*, in a case where *Hudd* is not prescribed, shall be deemed an aggravator," is limited, according to Abou Huneefah and Imām Mohummud, to thirty-nine stripes; being one less than the lowest prescribed penalty; viz. that of forty stripes for slandering a slave.<sup>3</sup> The word *See'asut*, which in its original sense de-

and of *See'asut*

<sup>1</sup> *Moheet* and *Sirājeeyah*, quoted in *F. A.*

<sup>2</sup> See the stated definition, (with verbal alterations) in Trans. of *Hid.* vol 2, chap. entitled *Tāzeer*. It is however taken from the Persian version, not from the Arabic original, which begins with the example of "chastisement due for slandering a slave, or an infidel." Page 77 of English Trans. The Persian translators appear to have given their introduction to the chapter in question, partly from the authorities cited by them, Tumurtāshee, Surukhshee, and Shāfee; partly from the commentaries on the *Hidāyah*.

<sup>3</sup> Abou Yoosuf takes the smallest penalty, under the provisions of *Hudd*, for a

notes *protection*, is used, technically, to express exemplary punishment, such as the ruler, or his judiciary delegate, may deem expedient for the protection of the community from atrocious offenders, who commit the second class of crimes above defined; especially such as are habituated to the commission of such crimes; and whom there can be no hope of reclaiming from their evil courses by flight or temporary correction.<sup>1</sup> In such cases there is no limitation to the exercise of a second discretion; and in some instances it is expressly declared to extend to death.<sup>2</sup>

In an attempt to illustrate the principles and rules of the discretionary correction and punishment sanctioned by the Mohummudan law, for offences not falling within its specific provisions, or excepted from them by special circumstances, it will be perspicuous to state, in the first instance, what is applicable to *Tāzeer*, in its most extensive sense; and then to distinguish what is peculiar to the several descriptions of offences which are comprehended in it.

Order observed in the following remarks.

It has been already observed, under the head of justifiable homicide, that when an offence, liable to *Tāzeer*, has been actually committed, the magistrate only is authorized to punish the offender. In cases where the right of God, or public justice, is considered to prevail, the *Imām*, viz. the sovereign or his delegate, is exclusively competent to remit the punishment of the criminal; and even this competency is qualified by a condition of ascertained previous repentance.<sup>3</sup> In such cases, as in other public prosecutions, the evidence of the prosecutor is admissible; or the offender may be brought to trial, and punishment, without any complaint from the party injured. But when the right of the individual is deemed prevalent, his claim, or that of his representative, is requisite, as in other instances of private retribution: the claimant, though incompetent to bear testimony in his own cause, is at liberty to forgive the offence; for establishing which, moreover, secondary witnesses, viz. persons appointed by absent witnesses to give evidence for them, who are not admissible in any public prosecution, may be admitted; or, in defect of proof, the accused party may be put upon his oath.<sup>4</sup> With exception however to the authorized chastisement of a wife by her husband; of a child by the parent; and of a slave, male or female, by the owner; the *Tāzeer* allowed, as a private right, cannot be legally inflicted without a judicial sentence, or the award of an arbitrator.<sup>5</sup> In all cases of offences against individuals, which incur *Tāzeer*, the penalty is equally incurred whether the injured party be a Mosulman, or otherwise.<sup>6</sup> And though, for the full legal conviction of a Mosulman, the evidence of witnesses of any other religious persuasion is not strictly admissible; nor of women, though of the faith of Islam, if the prosecution be of a public nature, (*ba huk-i-oollah*); yet *Tāzeer*

General provisions relative to *Tāzeer* and *Seedūt*.

freeman; which being eighty stripes, he deducts five, after the example of Alee, or according to another report, one only; and considers the residue, seventy-five, or seventy-nine, stripes, to be the limit of *Tāzeer*. See Trans. of *Hid.* vol. 2, p. 78.

<sup>1</sup> The stated meaning of *Seedūt* is expressly noticed in the *Buhr-i-rāyik*; and it corresponds with the common use of the term in the *Futūwās* given by the law officers of the nizamat adawlut.

<sup>2</sup> The *Tubeen*, *Moonyah*, and *Moojtuba*, quoted in the *Buhr-i-rāyik*.

<sup>3</sup> *Fut h ool kudeer* and *Nuhr-i-fāyik*, quoted in *F. A.*

<sup>4</sup> *Futūwā-i-Kāzee Khān*, quoted in *F. A.*

<sup>5</sup> *Fut h ool Kudeer* quoted in *F. A.*<sup>6</sup> See also Trans. of *Hid.* vol. 2, p. 77, though what is there given from the Persian version, respecting *Tāzeer* which every one is allowed to exercise for the prevention of a crime, at the time of an actual attempt to commit it; and that which is demandable for private injuries, by complaint to the magistrate; is not (as before noticed) in the Arabic original.

<sup>6</sup> *Fut h ool Kudeer*, cited in *Buhr-i-rāyik*.

and *Seeásut* may, in all cases, be inflicted by the *Imám*, upon strong presumption, whether arising from the credible testimony of men, or women, of whatever religion, or from circumstances which warrant a violent presumption of guilt; as well as upon the confession of the party accused; or the legal proof required in cases of *Hudd* and *Kísás*; and it is expressly declared, that a conviction for *Tázeer* may be founded upon the depositions of the prosecutor, and one credible male witness, in public cases; or, in those of a private nature, upon the testimony of two men, or one man and two women; as in other instances wherein individual right only is at issue.<sup>1</sup> On conviction of offences subject to *Tázeer*, which may not require capital or other exemplary punishment of the criminal as a warning to others, and in which therefore the reformation of the offender himself is the principal object, the *Kázee* is authorized to exercise a just discretion, according to the nature of the offence, and the rank and situation of the offender, in adjudging him to receive an admonition, such as may render him ashamed of his conduct; or a public reprimand, on personal arrest, and exposure at the door of the court; or imprisonment; or stripes, within the restriction before mentioned. Blows on the back of the neck, and pulling by the ears, are also legal modes of chastisement; and according to Abou Yoosuf, the offender's property may be taken and kept in deposit till he show signs of contrition; but is not to be finally levied as a fine to Government; the taking away any Mosulman's property, without legal cause, being expressly declared unlawful. Nor is even the temporary sequestration of property sanctioned by the law, in the opinion of Abou Huneefah and *Imám* Mohummud.<sup>2</sup> *Tázeer* by reproach is declared lawful in the *Moqjtuba*, but on one authority only, that of Aboul Eeseer, and under a restriction, that it be not slanderous.<sup>3</sup> Banishment (*Tughreeb*) is permitted, at the discretion of the *Kázee*, as has been already noticed in the case of whoredom.<sup>4</sup> And *Tush heer*, or public exposure (with the face blackened) is expressly declared to be the punishment inflicted by Omur upon a false witness, in addition to forty stripes; though Abou Huneefah, and his two disciples, differ in opinion, as to whether this should be considered a sentence of *Tázeer*, for personal correction, or of *Seeásut*, for exemplary punishment.<sup>5</sup>

Differences  
between *Hudd*  
and *Tázeer*.

In the *Humádeeyah*, the following differences between *Hudd* and *Tázeer* are cited from the *Nisáb ool Ihtisáb*. 1. *Hudd* is fixed and specified; whereas *Tázeer* is left to the judgment of the *Imám*. 2. *Hudd* is prevented

<sup>1</sup> *Buhr-i-ráyyik*, quoted in Treatise on *Tázeer* by *Kázee* Nujm oo-Deen. Also the *Tubeen*, *Káfee*, and two *Moheets*, quoted in *F. A.*

<sup>2</sup> *Niháyah* and *Fut h ool Kudeer* quoted in the *F. A.* The passage of similar import, in the Trans. of *Hid.* vol. 2, p. 76, appears to have been introduced, by the authors of the Persian version, from the *Niháyah*. In the *Buhr-i-ráyyik* an opinion is stated, that if the magistrate, after sequestering the property of the offender, see no hope of his amendment, he may order the forfeiture of it. And the *Shurh ool ásar* is cited in proof that, at the commencement of *Islám*, it was customary to take property in exaction of *Tázeer*, though the usage was afterwards discontinued. But the author of the *Buhr-i-ráyyik* adds, that the doctrine, against the legality of *Tázeer* by a pecuniary exaction, is more authoritative. It appears however to have exclusive reference to Mosulmans, and not to bar the levy of a fine, when considered the fittest penalty, from offenders of any other persuasion.

<sup>3</sup> *Buhr-i-ráyyik*.

<sup>4</sup> Trans. of *Hid.* vol. 2, p. 17. The author of the *Buhr-i-ráyyik* contends however that the proper construction of *Tughreeb* is imprisonment, which is a species of banishment from the world; and not exile from city or country, as understood by others.

<sup>5</sup> See the argument; and the mode of stigmatizing a false witness by *Tush heer*, as prescribed by *Shorýh*, *Kázee* of *Koofah*. Trans. of *Hid.* vol. 2, p. 715, 716.

by the existence of any *Shoobhah* (doubt, or legal defect); but *Tázeer* is executed notwithstanding such. 3. *Hudd* is not enforced upon a minor; but *Tázeer* is, in some cases; viz. in matters of a private nature. The author of the *Buhr-i ráyik*, as an example of the latter, quotes from the *Koonyah*, that a boy giving abuse to a learned man is liable to *Tázeer*; minority in such cases being no obstacle to a just correction; but he adds, that for crimes of a public nature, such as whoredom, drunkenness, theft, and robbery, minors are equally exempted from *Tázeer*, as from *Hudd*. He further remarks, that if a convicted offender be under sentence, at the same time, to suffer both *Hudd* and *Tázeer*, the latter should be first inflicted, provided it be exclusively due in satisfaction for private injury: not as a punishment for the ends of public justice; in which case the stated penalty would be first for execution.

The following offences are specified in the *Futawá-i Aálumgeeree*, as subject to *Tázeer*; but are not distinguished as belonging to the first or second of the four classes enumerated; though many of them manifestly appertain to the former; and the degree of criminality, with reference to times and circumstances, as well as to the public detriment, or dangerous tendency, of the offence, and the evil disposition and bad habits of the offender, is the general criterion for determining what crimes are to be ranked in the second class:—

Specification of offences liable to *Tázeer*, in the *F. Aálumgeeree*.

1. Abusive language, (*Shutm* or *dooshmám*,) respecting which the author of the *Shurh i-rikáyah* has given a general rule; whereby, he states, every case may be decided, to this effect—"When words of reproach do not amount to the legal crime of slander or whoredom, for which the specific punishment of *Hudd* is established, it must be considered whether they are liable to *Tázeer* or not. If they impute a voluntary act, which is forbidden by the law, and also commonly judged disreputable, they incur *Tázeer*; but not otherwise, unless the credit of persons of eminence be affected by them. The condition of a *voluntary* act excludes what is natural and constitutional. Therefore if a person call another an ass, *Tázeer* is not incurred; as the literal sense cannot be intended, and the metaphorical use of the term for a fool, or blockhead, refers to a natural defect. It is the same if the appellation of monkey be given, to denote deformity; or of dog, to express a bad disposition. But if these terms be applied to a respectable person, such as a learned man, a descendant from Alee, or one of eminent virtue, *Tázeer* is due for the injury done to such persons, by the application of disrespectful language to them. It is the reverse, if the party addressed be of low degree, as such language is common among persons of that description, and is not held of consequence. The qualification of the act imputed, that it be *unlawful*, excepts voluntary acts which, though not forbidden by the law, are generally esteemed discreditable; as the profession of a barber; and such like professions of low estimation; to ascribe which therefore is not punishable by *Tázeer*, unless the party addressed be of a rank to suffer from the imputation, as already explained. Lastly, the requisite, of the act imputed being *disreputable*, exempts from *Tázeer* the allegation of an act which, though forbidden by the law, is not thought criminal or dishonorable in society: as the game of draughts, and other games; as well as the office of *Deewán* or financial minister, under a tyrant. Moreover, the degree of *Tázeer* is committed to the judgment of the *Imám*. Let him therefore consider the nature of the offence, as small or great; and the condition of the speaker, as well as of the party addressed." It is further stated in the *Buhr-i ráyik*, on the authority of *Imám Mohummud*, that when a person is convicted of opprobrious language, if he be a gentleman (*Sahib-i morovut*) he should be admonished; if of low degree, he should be imprisoned; or if he

Abusive language.

have been guilty of gross or repeated abuse, both flogged and confined. It is added, that words of reproach are subject to *Tāzeer*, when the speaker fails in proving them true; but not when the truth of them is established.<sup>1</sup>

Forgery.  
Ridicule of law, or pretended strictness.  
Disfiguring slaves or cattle.  
Compelling murder, or whoredom.  
Bestiality.  
Sodomy.  
Lasciviousness.  
Enticing a man's wife, or daughter, for marriage.  
Self pollution.  
Being at an assembly of wine drinkers.  
Selling wine, or raking interest.  
Causing an infant to drink wine.  
Breaking fast of *Icman*.  
Slapping the face, or striking off a turband.  
Giving a blow with a stick or other weapon not dangerous.

2. Forgery of deeds or letters, with a fraudulent design.
3. Ridicule of the ordinances of the law, or affected sanctity and scrupulousness, beyond the provisions of the law, for purposes of imposition.
4. Cutting off the hair of female slaves; or the tails of cattle.
5. Compelling another to commit murder or whoredom.<sup>2</sup>
6. Bestiality.<sup>3</sup>
7. Sodomy.<sup>4</sup>
8. Lasciviousness, with a strange woman, whether free or a slave.<sup>5</sup>
9. Enticing away the wife, or daughter, of another; and giving her in marriage to a third person.<sup>6</sup>
10. Self pollution.<sup>7</sup>
11. Being present at an assembly of wine drinkers, or of persons met to drink any thing resembling wine; though the person so present have not himself drank any prohibited liquor.
12. A Mosulman selling wine, or taking interest.<sup>8</sup>
13. A man causing his minor son to drink wine.<sup>9</sup>
14. A fixed resident knowingly breaking the fast of *Rumzán*.<sup>10</sup>
15. Giving a slap on the face, or striking off a Mosulman's turband in the bazar.<sup>11</sup>
16. Giving a blow with a stick, or other weapon, not dangerous to life.<sup>12</sup>

<sup>1</sup> It is explained that the proof must be of some specific act; or, according to the *Fut'h ool Kudeer*, of notoriety.

<sup>2</sup> The 2d, 3d, 4th, and 5th, instances, are quoted in the *F. A.* from the *Tátárkháneeyah*. They are also cited in the *Humádeeyah*.

<sup>3</sup> *Surájeeyah* and *Jouhur-i-nýyurah* quoted in *F. A.* In these the crime is specified, as between a man and quadruped; or between a woman and an ape. See also Trans. of *Hid.* vol. 2, p. 27.

<sup>4</sup> *Futáwá-i-Kázee Khán; Tubéen*; and *Hidáyah*, vol. 2, of Trans. p. 26. Aboo Yoosuf and Imám Mohummud maintain, that the crime of sodomy should incur the same specific punishment as whoredom, and one report of Sháfi'ee's opinion is to the same effect. Another is, that in pursuance of a tradition from the prophet, both parties should be put to death. But Aboo Huneefah denies any resemblance of the crime to whoredom; and considers the tradition cited by Sháfi'ee to relate to *See'usat*; when exemplary punishment may appear requisite. See Trans. of *Hid.* in which, however, unnatural copulation with a strange woman only is mentioned. Sodomy with a boy, described in the original as the *act of Lot*, is omitted. The perpetration of this unnatural crime, with a man's own wife, or female slave, is not specified in the *Hidáyah*, but in the *Tubéen* it is, and declared liable to *Tāzeer*.

<sup>5</sup> *Fut. Kázee Khán* and *Hidáyah*, vol. 2, of Trans. p. 26.

<sup>6</sup> *Futáwá-i-Koobra*. Imám Mohummud declared on this case, that he would keep the seducer in confinement for life; or till he should restore the woman enticed away by him.

<sup>7</sup> *Siráj-i-muhtáj*, quoted in the *F. A.*

<sup>8</sup> The 11th and 12th Examples are both cited in the *F. A.* from the *Nuhr-i-Fáyik*. But in the case of interest, it must be understood, according to the opinion of Aboo Huneefah and Imám Mohummud, that the borrower is not an hostile infidel, in a foreign land. See Trans. of *Hid.* vol. 2, page 501. Public singing and mourning are added as incurring *Tāzeer*, from the *Nuhr-i-fáyik*, by Kázee Nujm oo' deen.

<sup>9</sup> *Tátárkháneeyah*, quoted in the *F. A.*

<sup>10</sup> Ditto. It is added that the offender may be imprisoned, after chastisement, if there be reason to suppose he will again break the fast.

<sup>11</sup> Ditto.

<sup>12</sup> *Buhr-i-ráyik* and *Nuhr-i-fáyik*, quoted in the *F. A.* It is added, that if the party

It is further stated in the *Futūwā* of Kázee Khán, that persons against whom an imputation lies, of murdering, robbing, or assaulting people, may be kept in perpetual imprisonment, unless they evince contrition. But in qualification of this principle, the author of the *Buhr-i-ráyik* observes, that the imputation, to warrant imprisonment, should be supported by, at least, the testimony of one credible witness; or of two witnesses, whose credit may not have been ascertained. In the *Tátárkhánee* it is stated, that disturbers of the peace, and persons who excite terror by their attempts against life, or property, may be confined till they repent. And in the *Humádeeyah*, that persons who give intoxicating or stupifying drugs, for the purpose of theft, are liable to severe correction and imprisonment till they show marks of repentance, and make compensation for the property stolen by them. In the work last mentioned it is also declared, on the authority of Abou Yoosuf, that the persons above described may be dealt with as the *Imám* shall judge proper; and that a strangler, confessing his crime, or detected with the usual implements of strangling, and stolen property, may be sentenced by the *Imám* to be beheaded and crucified. Likewise, that sorcerers, proved to have done serious injury by their sorcery, may be put to death, or imprisoned, according to the circumstances of the case. And an instance is quoted from the *Moheet* to prove that death may be inflicted upon strong presumption without complete legal proof.<sup>1</sup>

Other cases in which *Tázeer* may be inflicted.

With respect to crimes which, on proof, are subject to the specific penalties of *Hudd* and *Kisás*, a difference of opinion has obtained among the learned, whether they are also liable to *Tázeer*, or not. Those who include such offences in the provisions for discretionary correction and punishment consider these to extend to every unlawful act, which is injurious to the community, or to individuals; whereas those who maintain the opposite doctrine restrict *Tázeer* to acts for which no specific penalty is fixed by the law. The former construction is however preferred, and generally admitted; because the right of God, or principle of public justice, expressed or implied, attaches to every case of both *Hudd* and *Kisás*; and may be exercised at discretion, by the magistrate, if it appear expedient. This, it is argued, is clearly deducible from a passage in the *Hidáyah*, which vests the *Imám*, or *Kázee*, with a discretion of adding imprisonment, or banishment, to the specific penalty of flagellation in certain cases of whoredom, as already noticed.<sup>2</sup> The author of the *Kifáyah* states the same principle to be equally applicable in all cases of *Hudd* and *Kisás*. *Tázeer* therefore may be inflicted in all instances, where *Kisás* or *Hudd* cannot be enforced; whether barred by some legal impediment; or in cases of *Kisás*, by the pardon or compromise of the heir of the slain, or by some of the heirs not attending to claim retaliation.<sup>3</sup> The following rule, for the guidance of the *Kázee* in adjudging *Tázeer*, is cited in the *Moheet-i-Boorhánée*. "Let consideration be given to the nature of the offence which demands the infliction of *Tázeer*. If it be within the provisions of *Hudd*, but excepted from the enforcement of them, in the particular case, by some special circumstance, *Tázeer* by stripes, (supposing this mode of correction to be applicable) should be inflicted to the utmost limit, (viz. thirty-nine.) For example, if a person call the female

Crimes, which, on proof, are liable to *Hudd*, or *Kisás*, whether also liable to *Tázeer*.

Rule cited in the *Moheet-i-Boorhánée*.

receiving the blow, return it, he is also liable to *Tázeer*. But this must not be construed to prohibit strict self-defence.

<sup>1</sup> In the *Ashbáh ó Nuráyir*, strong presumption (*Akkuri-rá'ee*, or *Ghálíb-oo-zun*) on which legal judgments of conviction and condemnation are founded, is defined to be, a preponderating inclination of the mind, producing a conviction, which nearly approaches to certainty.

<sup>2</sup> Trans. of *Hid.* vol. 2, p. 17.

<sup>3</sup> Treatise on *Tázeer*, written by Kázee Nujm-oo-Deen.



slave, or *oom i-wuhud* of another, a whore, he should be chastised to the full extent of corrective *Tázeer*; because the offence is slander, and the offender is exempted from the stated punishment of *Hudd*, merely by the circumstance of the party slandered not being *Mohsin*. But if the offence be not subject to *Hudd*, as the calling another a sloven or libertine, the degree of flagellation, or other species of *Tázeer*, is left to the discretion of the *Imám*."

Three cases, in which *Tázeer*, by stripes, is to be inflicted to the full extent.

The *Buhr-i-ráyik* also specifies three cases, in which *Tázeer*, by stripes, is to be inflicted to the full extent. First. For acts of lasciviousness with a strange woman, not amounting to the actual crime of whoredom. Secondly. When a thief is seized, after collecting property, but previously to removing it from the place of custody. Thirdly. For expressions which fall within the penalty of *Hudd* for slander; but are specially excepted from it by the condition of the person slandered; as when whoredom is imputed to a *Zimnee* or slave.

foregoing cases and rule, not applicable to exemplary punishment.

How far the *Káze* is restrained from inflicting discretionary punishment, equal to the specific penalties, defined by the law.

And in what cases the power of adjudging *Sevánt* at discretion is to be exercised.

The foregoing cases and rule do not apply to exemplary punishment for the ends of public justice, when a flagrant offender, convicted either on legal evidence or on strong grounds of presumption, may appear to merit a more adequate punishment than what he is subject to, under the ordinary provisions of the law. But except in cases of a heinous and special nature, which, in the judgment of the sovereign, or his delegate, may call for a severe example, the *Káze* is restrained, by the tradition before noticed, from inflicting discretionary punishment, equal to the specific penalties; and although in cases of *Seeásut* there is no limitation to the exercise of a sound discretion, according to times and circumstances, the power of enhancing the specific penalties of the law, or of adjudging them without the legal proof required for the enforcement of them, or when they are not legally incurred under exceptions to the general rules of *Hudd* and *Kisás*, is to be exercised occasionally only, as public exigency may call for it; not constantly, and in the ordinary course of justice. This is stated and enlarged upon by Moulaavee Mohummud Ráshid, at the conclusion of his dissertation on *Tázeer*, in the following terms:—

Illustration from Moulavee Mohummud Ráshid's Treatise on *Tázeer*.

"From the whole of the cases stated in this treatise, it is deducible that *Tázeer*, with respect to the degrees of offences, is of four kinds. 1. For an offence subject to *Hudd*, but, though established by legal proof, exempted by some intervenient circumstance from infliction of the prescribed penalty. As when a slanderous expression is used to a slave; or when a minor, or a relation to the person robbed, steals property sufficient to incur the penalty of theft. 2. For an offence liable to *Hudd*, but not legally proved as required for a sentence of the fixed penalty; though established by sufficient grounds of presumption to warrant a judgment of *Tázeer*; as when testimony be given by two witnesses of uncertain credit, or one credible witness, to a charge of robbery. 3. For an offence not subject to *Hudd*, nor liable to the extremity of *Tázeer* by scourging, as when a person calls another a sloven. 4. For an offence not subject to *Hudd*, but liable to the full extent of corrective *Tázeer*, or to exemplary punishment equalling, or exceeding, the penalties of *Hudd*: as sodomy; and repeated flagitiousness, to the public detriment. In the three first cases, it is not legal to inflict *Tázeer* to the extent of *Hudd*: as, otherwise, in the first and second, *Hudd* would be inflicted, when it is not legally due; and the tradition, forbidding such aggravation, would thereby be disobeyed. Moreover, in the third case, the punishment would exceed the crime. A further threefold division of *Tázeer* may be made, with regard to the cases subject to it. 1. For trivial instances. 2. For such as are liable to the provisions of *Hudd*. 3. For heinous cases, in which exemplary punishment may be inflicted, extending to death. In giving judgment upon charges of the first description, the *Káze* ought

not to inflict *Tázeer*, equal to the full extent of the limited number of stripes, viz. thirty-nine. In those of the second class, he should not pass sentence for the stated penalties of *Hudd*. But with respect to the third description, corresponding with the fourth class in the first division, he may act to the best of his judgment. In cases of *Kisás*, however, if retaliation be prevented by the forgiveness, or compromise, of the heirs of the slain, or by any other cause affecting the sentence, after legal proof; let him not inflict *Tázeer*, which is the right of God, equal to *Kisás*, which is the right of the individual, and outweighs the former in the instances subject to retaliation. Discretionary correction, upon strong presumption of guilt, is indeed left to the judgment of the *Kázee*, in all the instances specified; but, excepting those mentioned in the final class of each division, wherein exemplary punishment, extending to death, is sanctioned, it is not meant that the *Kázee* should, at his discretion, adjudge *Tázeer* equal to the fixed penalties of *Hudd*. Nor, when a criminal, within the two classes referred to, is, in the just exercise of the *Kázee's* discretionary power, sentenced to suffer death, for the sake of example to others, should it be a sentence of *Hudd*. For instance, a person convicted of sodomy should not suffer lapidation, which is the stated punishment for whoredom: nor should a man, punishable for general misconduct, suffer amputation, which is the penalty for particular offences. If any one contend that the well known tradition, "Whoever inflicts *Hudd*, where *Hudd* is not due, is an oppressor," applies to trivial offences only, not within the provisions of *Hudd*, as might be inferred from the literal sense of the words; I answer, that the evident meaning of the tradition is more comprehensive, and includes, besides offences not subject to the penalties of *Hudd*, cases in which those penalties cannot be legally adjudged, on account of some circumstance of prevention. The *Tázeer* of offences not punishable by *Hudd* is therefore of three kinds. First. For trivial offences, which, though established by legal proof, are not subject to any specific penalty. Secondly. For offences subject to *Hudd*, but, though legally proved, excepted by some incidental circumstance, from a judgment for the stated penalty. Thirdly. For offences liable to *Hudd* on legal proof; but the evidence of which is defective. The whole of these descriptions of *Tázeer* are within the restriction of the tradition cited. From the definition given of *Seeásut*, or exemplary punishment for the protection of the community, it is manifestly intended to be occasionally inflicted by the *Imám*, when it may appear expedient: not to be constantly adjudged. This is inferrible from the special nature of *Seeásut*, as applicable to particular cases; and not being founded on any express authority from the law giver, to enforce it, at all times, without necessity, would be objectionable."

In verification of what has been stated in this summary of the Mohummudan criminal law, it may not be improper to conclude it with the following translation of two *Futwás* delivered, in the years 1794 and 1799, by the *Kázee ool Koozádt*, and other law officers of the court of *nizamut adawlut*, in answer to questions from that court, relative to the provisions of the law of *Islam* for *Tázeer*; and punishment in cases of *Shoobhah*.

"*Tázeerát*, or the penalties of *Tázeer*, which are less than those of *Hudd*, and the extent of which is not defined by the law, but left to the judgment of the *Kázee* and sovereign, are of two kinds: one of a private nature, being in satisfaction of individual rights; the other public, and considered to be the right of God, for the protection of his creatures. That which attaches to individual right may be excused by the person to whom the right appertains. That which is the right of God is enforceable by the sovereign and his delegates. But if the sovereign know that the offender has repented of his crime previously to the infliction of *Tázeer*, he is authorized to remit it. In cases

Translation of two *Futwás* given by the law officers of the *Nizamut Adawlut*.

Future.

of a public nature the charge of a prosecutor is not essential and the person preferring a charge may be admitted as a witness, with another, to prove it. *Tázeer* is incurred by any unlawful and injurious act; or, more strictly, by any forbidden action, for which no determinate legal penalty is due. In the retribution for illegal homicide, although individual right is predominant, yet the right of God likewise attaches, for the preservation of the lives of mankind. What is written in law-books, that *Kisás*, or retaliation, is a private right, means only that the exaction of blood for blood, or limb for limb, under the legal provisions of *Kisás*, may be claimed as the right of the parties declared entitled thereto. But when *Kisás* is prevented by any circumstance of exemption, if the magistrate, for the time being, judge it expedient, he may enforce the public right, by inflicting *Tázeer*, less than the specific penalty fixed by the law. This is clearly stated in the *Buhr-i-ráyik* and other books of authority.\* If, therefore, retaliation of death cannot be adjudged against a murderer, from the want of two credible witnesses, to establish a legal conviction; but a presumption of his guilt arises from the testimony of one credible witness, or of two witnesses of uncertain credit; he may be legally subjected to *Tázeer* of imprisonment. It is further stated in the *Futrá-i-Aálumgeeree*, that if a master kill his slave, the magistrate may inflict *Tázeer* upon him: whence it appears, that the murderer being exempt from a sentence of *Kisás* or *Diyut*, from his being the master of the slain, is subject to discretionary punishment."

*Futrá delivered in 1799.*

"The legal penalties of *Hoodood* and *Kisás* are barred from adjudication by a slight doubt of the crime having been committed; as well as by any circumstance of exception from the general rules, such as the relationship between a father and son, when the former murders the latter; or one of a band of robbers being a minor or lunatic. But the discretionary punishment of *Tázeer* may be inflicted, if the magistrate judge it proper, notwithstanding the existence of a legal defect in the case. There are three degrees of imperfect evidence. The first produces *Shuk*, or uncertainty whether the charge be true or false. The second establishes *Zun*, or presumption that the accusation is true. The third excites *Wuhm*, or doubt against the truth and probability of the fact alleged.<sup>2</sup> The degree of *Zun* is admitted to be a ground of legal conviction and sentence, provided the mind receives a strong impression and assurance from it; in which case it is denominated *Akbur-i-ráee* and *Zun-i-ghálib*. This degree of violent presumption amounts nearly to certainty; and is fully described, as such, in the *Ashbáhó Nuzayir*. The sum therefore of what has been mentioned upon imperfect evidence, is, that a penal sentence may be founded upon it, when, in the judgment of the magistrate, it affords strong ground of presumption that the crime charged has been committed by the party accused. In the *Buhr-i-ráyik* it is related, from the jurist Aboo Bukr Aâmush, that when a person accused of theft denies the charge, the magistrate may act to the best of his judgment upon the case. If he be impressed with a strong conviction that the prisoner has committed the theft; and has the stolen property in his possession; he may inflict discretionary punishment. In the *Moheet* it is declared that the shedding of blood upon violent presumption is authorized. And a similar declaration is contained in the *Buhr-i-ráyik*, that it is held

\* A quotation from the *Buhr-i-ráyik*, which has been already cited, is here introduced. It implies only that a person against whom there may be a presumptive imputation of murder, robbery, or assault, though insufficient for his legal conviction and punishment, may be kept in confinement, till he evince repentance.

<sup>2</sup> This is the order of the original: though, according to the degrees of evidence stated, or the gradations of doubt, uncertainty, and belief, arising therefrom, that of *Wuhm* should rather have commenced, than concluded, the series.

lawful to take away life upon strong presumptive proof. Thus if a man enter the house of another with a drawn sword, and the owner of the house entertain a firm belief that the other is come to kill him, he may put the stranger to death. Strong presumption is sometimes produced by the circumstances of the case, without the testimony of witnesses. It is accordingly noticed by the author of the *Buhr-i-ráyik*, that in like manner as a charge is proved by witnesses, or by the confession of the accused; so it is also established by convincing circumstances. Thus if a man come out of a house with a bloody knife in his hand; and he appear terrified, and run away; and the people immediately entering the house find a person whose throat has been recently cut; the blood dropping from it; and there be no other man in the house; these circumstances warrant a strong presumption that the man described is the murderer. A mere possibility of the person in question having cut his own throat, or that another may have cut his throat and escaped over the wall, is too remote from probability to be relied upon. Strong presumption is likewise, at times, found in the testimony of witnesses, not amounting to legal proof; in which case *Tázeer* may be inflicted, though *Hudd* and *Kisás* are prevented. Thus Kázee Khán says—"An imputed murderer, robber, or assailant, may be imprisoned, till he show contrition. Upon which the author of the *Buhr-i-ráyik* observes, that the imputation (*Itihám*) should rest upon the evidence, either of two witnesses of unascertained credit, or of one credible witness. Upon such evidence therefore, though legally defective, if it produce a violent presumption that the accused is guilty of the crime alleged against him, *Tázeer* by imprisonment may be adjudged. But, on the contrary, if only a single witness of uncertain credit, or a known reprobate, have given testimony, the magistrate is not authorized to imprison the accused upon evidence of so doubtful a nature."

It has been observed, in the note to a preceding page, that the provisions of the Mohummudan law concerning rebels are more properly applicable to religious insurgents; being intended for Mosulmans, who rise, in arms and force, against their rightful *Imám*, of the same persuasion, under some plea of a legal objection to his authority. The law respecting such is fully stated in the *Hidáyah*,<sup>1</sup> and the authors of the Persian version of that work have introduced the chapter respecting *Bághéán*, or rebels, with a discrimination (taken from the *Futh-ool-kudeer*, and other authorities) of the several descriptions of persons who resist the authority of the rightful *Imám*,<sup>2</sup> as well

Supplementary observation on the special provisions of *Tázeer* for *Bághéán*, or rebellion.

<sup>1</sup> See Trans. vol. 2, page 247. It is declared incumbent on the *Imám* to endeavour to recal rebels to their allegiance, and show them what is right, in such manner that the misunderstanding which occasioned their defection may be removed; because Alee thus conducted himself towards the people of *Heerá*, who rebelled. When levying troops, or in actual force and insurrection, they may be opposed; and if taken prisoners, may be confined till they repent; but the whole of the provisions against *Bághéán*, or rebellion, view it rather as a religious, than a civil offence; and aim at prevention, or suppression, of the actual insurrection only; without providing, by exemplary punishment, against the recurrence of similar attempts.

<sup>2</sup> Four descriptions are specified, viz.—1. Those who withdraw their obedience from the *Imám*, without any plea of right, whether they are in force or not; and who rob and murder Mosulmans; and put travellers in fear. These are called *Kitá ool tureek*, or highway robbers; the law respecting whom has been already stated. 2. Those who, without force, rob and murder Mosulmans, and put travellers in fear; but act on some pretext of justification. These also are subject to the same legal penalties, as the robbers abovementioned. 3. Those who assemble, in a large body, and possessing the means of open resistance, withdraw from their obedience to the *Imám*, on a plea which induces them to believe his title to the office invalid, and to justify war against him; whether such plea be founded on his tyranny or infidelity. These are termed *Khárijee*. They hold it lawful to kill Mosulmans, seize their pro-

as with a definition of the *Imám* so entitled; viz. a person in whom all the conditions of *Imámut* are united; such as *Islám*, freedom, sanity of intellect, and maturity of age; who has been elected by a tribe of Mosulmans, assenting to his holding the office; who desires to advance the faith of *Islám*, and to strengthen the Mosulman community; under whom Mosulmans enjoy security of person and property, as well as protection of their women; who levies the established tithe and tribute according to law; who, out of the public treasury, pays what is due to learned men, preachers, judges, and expounders of the law, lecturers and teachers, reciters of the *Korán*, and others; and who, in every respect, maintains the rights of Mosulmans. It is added that "whoever does not answer this description is not a *rightful Imám*; wherefore it is not incumbent to support him; but, on the contrary, it is a duty to oppose him; and make war upon him, till he adopt a right course, or be slain." Were the definition thus given of an *Imám ba huk*, or legitimate sovereign, and the right of opposing any other in the exercise of supreme authority, to be strictly maintained within the territorial possessions of the East India Company, it would be a question for serious consideration, whether the provisions of the Mohummudan law, concerning *bughát*, or rebellion, should be allowed to have any operation under the British Government; and the necessity of a new law, to supply the defects of the Mohummudan law, in the definition and punishment of crimes against the state, would be obvious.<sup>2</sup> But in the *Buhr-i-ráyik*, it is stated that

perty, and enslave their women. They likewise question the faith of the companions of the Prophet. The law concerning them, according to the unanimous opinion of lawyers and traditionists, is the same as the law against rebels. 4. A party of Mosulmans, who, in like manner, withdraw themselves from obedience to the *rightful Imám*; but do not hold it lawful to kill Mosulmans, seize their property, and enslave their women, as the *Khárijees* do. Persons who come within the fourth description are called *Boghát*; plural of *Bághee*, and derived from the word *Bughee*, which, in its original sense, means exaction, injustice, and opposition to right; and in the language of the law, is particularly applied to denote wrongful and illegal disobedience to the *rightful Imám*. It is so stated in the *Futh ool kudeer*."

<sup>1</sup> This is quoted in the Persian version of the *Hidayah*, from the *Mádmn ool hukáyik*, where it is stated to be copied from the *Fuwáyid*. The same definition of a *rightful Imám*, and sanction to oppose a person who does not come within it, are cited in the *Humádeeyah*, as copied from the *Khuzámút ool áiráyah*, on the *Fuwáyid*, or advantages of the *Hidayah*. It is cited in the same work, (the *Humádeeyah*) from the *Kunz-oo'-dukáyik*, that the rebel (*Bághee*) is one who withdraws from obedience to the *rightful Imám*, on a presumption that he is justified in so doing, and that the *Imám* has not a just title; although the ground of such presumption is erroneous. If he act without a pretext of this nature, he is subject to the ordinance against robbers." Also from the *Tuhkcek*, that "*Boghát* (rebels) are a party of Mosulmans, who rise against a just *Imám*, and refuse submission to the authority of his officers, on a plea of right. If they have not such plea, the law respecting them is the same as concerning robbers and highway-men."

<sup>2</sup> The expediency of a regulation for the purpose mentioned was suggested to the Governor General in Council, in the year 1801, by the *Futwás* of the law officers, upon the trials held in the preceding year, of the Nuwáb Shums oo' doulah, and Meerza Ján Tupish. The former was convicted of "attempts to enter into league with the sovereigns of other countries, for the purpose of subverting the British Government in Bengal; of endeavouring to connect himself with the zemindars of Behar, with a design of exciting an internal commotion; and of keeping up a treasonable correspondence." The latter was convicted of the charge of treason preferred against him, "in being joined in the counsels of Shums oo' doulah; in instigating the sending petitions and letters to Sooltan Zumán Sháh and his ministers of state; in representing as a great advantage, to Shums oo' doulah, the collusion of the zemindars of Soobah Azeemábad, on the strength of a *Mokhtarnámah* (written power) from them, which was

" by an *Imám*, is intended the *Sooltán*, or his *deputy* (*Náyib*;) and, in the *Futwá* of Kázee Khán it is copied from the *Siyur*, as the opinion of the learned, that a *Sooltán* derives his authority from two sources; one, election, namely the choice of a number of respectable Mosulmans; the other, exercise of power over his subjects, so as to hold them in awe and fear of his government; without which, election is not sufficient to establish sovereignty." It has been already observed that the British dominions in India are considered to form part of a Mosulman Empire, from the nominal acknowledgment of the King of Dehly, in whose name the coin is struck, as well as from the administration of Mosulman law and the appointment of *Kázees* in execution of it. On these accounts, and it may now be added, on the substantial ground of the protection afforded by the British arms to the representative of the house of Tymoor, the territory of the East India Company is considered to be *Dár-ool Islám*, and the Mohummudan law officers, under that consideration, have, in several *Futwás*, upon trials for treason and insurrection against the established government, held the provisions for *Bugháwut* to be applicable. They have indeed rather erred, in straining the application of them to cases for which they were not intended; and as they do not authorize more than imprisonment, except during actual resistance, or for the purpose of quelling an open rebellion, (when prisoners and fugitives may be put to death, if it appear necessary) the convicts have been declared liable to less punishment, under the special rules of *Tázeer* for *Bugháwut*, than might have been inflicted, at the discretion of the ruling power, and its judiciary delegates, on the general principles of *Seeásut*.<sup>1</sup> It will be sufficient

a mere forgery, and without foundation." Yet in both cases the prisoners were declared by the *Futwás* of the law officers, of the special court who tried them, and of the nizamat adawlut, liable only to "imprisonment, until they should show signs of repentance, to the satisfaction of the ruling power;" and the sentence accordingly passed upon each of them by the court of nizamat adawlut was "to be imprisoned until the Governor General in Council shall be satisfied with the sincerity of his repentance." Upon the exposition of the Mohummudan law which governed this sentence, the Governor General in Council (in a letter to the nizamat adawlut, dated the 9th July, 1801,) observed, that "the principle, on which this interpretation of the law is founded, appears to be, that the invasion of foreign powers, whom the criminals had solicited to attack the British possessions, and the plans of the same criminals for exciting internal insurrection in those possessions, had not been actually carried into effect. Under the native administration, this defect in the law would probably have been supplied by the exercise of that arbitrary power uniformly assumed in such cases by the Mohummudan Government. But as the British Government has wisely and honorably precluded itself from the exercise of such power, and has bound itself to administer justice according to the Mohummudan law, until that law shall be expressly altered, it is evident that the British power in India must be continually exposed to the most serious danger, unless this obvious defect of the Mohummudan law, with regard to the punishment of crimes committed against the state, be corrected." His Excellency in Council accordingly desired, "that the court would be pleased to prepare for his consideration a draught of a regulation, framed with a view to the object above stated; conforming, as far as local circumstances might admit, to the principles of the English law, with regard to the crime of treason, both in the definition of the crime, and in the punishment to be inflicted on persons who shall be convicted of it." The draught of "a regulation to supply the defects of the Mohummudan law, in the definition and punishment of crimes against the state," was, in pursuance of the above, submitted by the court of nizamat adawlut to the Governor General in Council, on the 12th October, 1803. But it was deemed sufficient, for the present, to enact Regulation 10, 1804, cited at length in the sequel, "for declaring the powers of the Governor General in Council to provide for the immediate punishment of certain offences against the state by the sentence of courts martial."

<sup>1</sup> The cases of Shums-oo-doulah and Meerza Ján Tupish have been mentioned in a former note. The persons who were brought to trial, for having been concerned

to add, in this place, that the law of *Bughwut*, being intended for Mosulman insurgents, is not applicable to *Zimmees*, or infidel subjects, unless they act in subordination to a Mosulman rebel, as his soldiers, or co-adjutors. This is expressly stated in the *Fut, h-ool-kudeer*, as follows :—" If a party of *Zimmees* seize a place, and prepare for war, they are enemies (*Ahl-i-hurb*) not rebels. But if rebels (*Ahl-i-bughee*) apply for assistance to *Zimmees*, and the latter consequently aid the former in war, the allegiance of the infidel subjects is not destroyed thereby : in like manner as the junction of a party of rebels (Mosulmans) to support *Zimmees* in battle, is not destructive of their faith : and they are subject only to the punishment of rebellion. If however a *Zimmee* subject serve an army of hostile infidels as a spy, he is liable to be put to death ; as by such service he is joined with them in actual hostility."

with Vizeer Alee, in his conspiracy against the Government, which took place at Benares in January, 1799, being also charged as accomplices with him in the murder of Mr. Cherry, and in other murders and acts of violence, Meerza Bég, and others, convicted of having accompanied Vizeer Alee, in arms, to Mr. Cherry's house, on the day of the massacre, were declared " liable to *Tâzeer*, at the discretion of the ruler of the country ;" and Meerza Bég, who appeared to have taken an active part in the massacre, was sentenced by the nizamat adawlut, on the 5th August, 1799, to suffer death.

## SECTION II.

### PROVISIONS FOR CRIMES AND PUNISHMENTS, IN AMENDMENT OF THE MOHUMMUDAN LAW.

#### *Measures adopted before the Year 1793.*

TO some, who peruse the foregoing statement of the Mohummudan criminal law, its provisions may appear so ill calculated for the ends of public justice, as to suggest the expediency of their total abrogation ; and of substituting for them a new code of laws, founded on those of England, or of some other country, where the principles of legislation and good government are better known, both in theory and practice, than they could be to the people who, nearly twelve centuries ago, became subject to the arms, religion, and policy of Mohummud ; or to those who have been since forced to acknowledge the arbitrary sway of his successors. Such, undoubtedly, would have been the opinion of a revolutionary French Government, had it been the fate of the natives of India to receive a system of internal administration from France in the year 1793 ; the year in which Louis the XVI was beheaded, and the state declared a republic. But such were not the sentiments of those who framed the laws and regulations comprised in the Bengal code of 1793. It is the remark of an eminent writer upon legislation ;<sup>1</sup>—That “ a true politician always considers how he shall make the most of the existing materials of his country. A disposition to preserve, and an ability to improve, taken together, would,” he says, “ be my standard of a statesman.” And, in another place, after pointing out the fatal consequences to be expected from the arbitrary proceedings of the French national assembly, who, to evade difficulties in remedying the errors and defects of old establishments, commenced their schemes of reform with abolition and destruction, he adds the following just observations ; which are here quoted at length, as appearing apposite to the introduction of the system of law and internal government, now established within the territory of the East India Company, subject to the immediate authority of the Government of Fort William ; and extended, in a great degree, to the whole of the Company’s possessions, under the

Reflections upon the statement of Mohummudan criminal law, contained in the preceding section.

And upon the principles which appear to have influenced the British Government in its amendments of the Mohummudan law

As well as generally in the introduction of the system of administration established within the territories of the East India Company

<sup>1</sup> Mr. Burke, in his Reflections on the French Revolution.



Quotation  
from Mr.  
Burke's Re-  
flections on the  
French Revo-  
lution.

Presidencies of Fort St. George and Bombay. "At once to preserve and to reform is quite another thing. When the useful parts of an old establishment are kept, and what is superadded is to be fitted to what is retained, a vigorous mind, steady persevering attention, various powers of comparison and combination, and the resources of an understanding fruitful in expedients, are to be exercised; they are to be exercised in a continued conflict with the combined force of opposite vices; with the obstinacy that rejects all improvement, and the levity that is fatigued and disgusted with every thing of which it is in possession. But you may object.—'A process of this kind is slow. It is not fit for an assembly, which glories in performing in a few months the works of ages. Such a mode of reforming, possibly, might take up many years.' Without question it might, and it ought. It is one of the excellencies of a method in which time is amongst the assistants, that its operation is slow, and in some cases almost imperceptible. If circumspection and caution are a part of wisdom, when we work only upon inanimate matter; surely they become a part of duty too, when the subject of our demolition and construction is not brick and timber, but sentient beings, by the sudden alteration of whose state, condition, and habits, multitudes may be rendered miserable. But it seems as if it were the prevalent opinion in Paris, that an unfeeling heart, and an undoubting confidence, are the sole qualifications for a perfect legislator. Far different are my ideas of that high office. The true lawgiver ought to have an heart full of sensibility. He ought to love and respect his kind, and to fear himself. It may be allowed to his temperament to catch his ultimate object with an intuitive glance; but his movements towards it ought to be deliberate. Political arrangement, as it is a work for social ends, is to be only wrought by social means. There mind must conspire with mind. Time is required to produce that union of minds which alone can produce all the good we aim at. Our patience will achieve more than our force. If I might venture to appeal to what is so much out of fashion in Paris, I mean to experience, I should tell you, that in my course I have known, and, according to my measure, have co-operated with, great men; and I have never yet seen any plan which has not been mended by the observations of those who were much inferior in understanding to the person who took the lead in the business. By a slow, but well sustained progress, the effect of each step is watched; the good or ill success of the first gives light to us in the second; and so, from light to light, we are conducted with safety through the whole series. We see that the parts of the system do not clash. The evils latent in the most promising contrivances are provided for as they arise. One advantage is as little as possible sacrificed to another. We compensate, we reconcile, we balance. We are enabled to unite into a consistent whole the various anomalies and contending principles that are found in the minds and affairs of men. From hence arises, not an excellence in simplicity, but one far superior, an excellence in composition. Where the great interests of mankind are concerned, through a long succession of generations, that succession ought to be admitted into some share in the councils which are so deeply to affect them. If justice requires this, the work itself requires the aid of more minds than one age can furnish. It is from this view of things that the best legislators have been often satisfied with the establishment of some sure, solid, and ruling principle in government; a power like that which some of the philosophers have called a plastic nature; and having fixed the principle, they have left it afterwards to its own operation."

How far the  
views and prin-  
ciples stated  
appear to have  
influenced the

The views and principles thus stated appear to have influenced the British Government in India, throughout all its attempts to improve the laws which it found in force at the periods of its territorial acquisitions; particularly its

endeavours to render the administration of criminal justice more adequate to the due attainment of the important objects intended by it. Instead of abrogating the Mohummudan criminal law, which, however defective, had been long in force, and was therefore known to the people; the administration of criminal justice was, for some years after the Company's acquisition of the *Deewany* grant, left, as formerly, to the *Názim*; and the influence only of the Company's servants was exerted to remedy the deficiencies of the law, or promote the due execution of it, as appeared requisite in the cases that occurred. By the judicial regulations which were proposed by the committee of circuit on the 15th August, 1772, and adopted by the President and Council on the 21st of that month, a court of criminal judicature was established in each district, under the denomination of *Phoujdarry Adawlut*, in which a *Kázee* and *Mooftee*, with the assistance of two *Moulavies*, as expounders of the law, were appointed to try persons charged with crimes and misdemeanors; and it was also declared to be the duty of the collector of the district, "to attend to the proceedings of this court, so far as to see that all necessary evidences are summoned and examined; that due weight is allowed to their testimony; and that the decision passed is fair and impartial, according to the proofs exhibited in the course of the trial; and that no causes be heard or determined but in the open court regularly assembled." A superior court of criminal jurisdiction was, at the same time, established at Moorshedabad, (then considered the capital,) under the designation of *Nizamut Sudder Adawlut*, in which was to preside a chief officer, having the title of *Daroghah*, on the part of the *Názim*, assisted by the chief *Kázee*, the chief *Mooftee*, and three capable *Moulavies*; whose duty it was declared to be, "to revise all the proceedings of the *Phoujdarry Adawlut*; and in capital cases, by signifying their approbation or disapprobation thereof, with their reasons at large, to prepare the sentence for the warrant of the *Názim*." A control over the proceedings of this court, similar to that vested in the collectors of districts over the *Phoujdarry Adawluts*, was lodged in the chief and council at Moorshedabad; and the object of such control was stated to be "that the Company's administration, in character of King's Dewan, may be satisfied, that the decrees of justice, on which both the welfare and safety of the country so materially depend, are not injured or perverted by the effects of partiality or corruption." But the only alteration in, or rather addition to, the provisions of the Mohummudan criminal law, made by these primary regulations of the British Government, was contained in the 35th article; to the following effect: "That, whereas the peace of this country hath, for some years past, been greatly disturbed by bands of decoits, who not only infest the high roads, but often plunder whole villages, burning the houses, and murdering the inhabitants; and whereas these abandoned out-laws have hitherto found means to elude every attempt, which the vigilance of Government hath put in force, for detecting and bringing such atrocious criminals to justice, by the secrecy of their haunts, and the wild state of the districts, which are most subject to their incursions; it becomes the indispensable duty of Government to try the most rigorous means; since experience has proved every lenient and ordinary remedy to be ineffectual. That it be therefore resolved, that every such criminal, on conviction, shall be carried to the village to which he belongs; and be there executed, for a terror and example to others; and for the further prevention of such abominable practices, that the village, of which he is an inhabitant, shall be fined, according to the enormity of the crime; and each inhabitant according to his substance; and that the family of the criminal shall become the slaves of the state; and be disposed of, for the general benefit and convenience of the people, according to the discretion of the Government." The grounds upon which the above

attempts of the British Government in India, to improve the laws it found in force, especially for the administration of criminal justice

Judicial Regulations of 1772.

Addition to the provisions of the Mohummudan criminal law made by the regulations of the British Government in 1772.

Grounds upon which the rule

stated was suggested by the Committee of Circuit.

severe rule was suggested by the committee of circuit, are stated in the following extract from their letter to the President and Council, dated 15th August, 1772. "We have judged it necessary to add to the regulations, with respect to the courts of *Phoujdarry*, a proposal for the suppression and extirpation of decoits, which will appear to be dictated by a spirit of rigor and violence, very different from the caution and lenity of our other propositions; as it in some respects involves the innocent with the guilty. We wish a milder expedient could be suggested; but we much fear that this evil has acquired a great degree of its strength, from the tenderness and moderation which our Government has exercised towards these banditti, since it has interfered in the internal protection of the provinces. We confess that the means which we propose can in no wise be reconcilable to the spirit of our own constitution; but until that of Bengal shall attain the same perfection, no conclusion can be drawn from the English law, that can be properly applied to the manners or state of this country. The decoits of Bengal are not, like the robbers in England, individuals driven to such desperate courses by sudden want: they are robbers by profession, and even by birth; they are formed into regular communities, and their families subsist by the spoils which they bring home to them; they are all, therefore, alike, criminal wretches, who have placed themselves in a state of declared war with our Government, and are therefore wholly excluded from every benefit of its laws. We have many instances of their meeting death with the greatest insensibility; it loses therefore its effect as an example: but when executed in all the forms and terrors of law, in the midst of the neighbours and relations of the criminal; when these are treated as accessaries to his guilt, and his family deprived of their liberty, and separated for ever from each other; every passion, which before served as an incentive to guilt, now becomes subservient to the purposes of society, by turning them from a vocation, in which all they hold dear, besides life, becomes forfeited by their conviction: at the same time, their families, instead of being lost to the community, are made useful members of it, by being adopted into those of the more civilized inhabitants. The ideas of slavery, borrowed from our American colonies, will make every modification of it appear, in the eyes of our countrymen in England, a horrible evil. But it is far otherwise in this country: here slaves are treated as the children of the families to which they belong; and often acquire a much happier state, by their slavery, than they could have hoped for by the enjoyment of their liberty; so that, in effect, the apparent rigor, thus exercised on the children of convicted robbers, will be no more than a change of condition, by which they will be no sufferers; though it will operate as a warning on others; and is the only means, which we can imagine, capable of dissipating these desperate and abandoned societies, which subsist on the distress of the general community."

Remarks upon the stated penalties for gang-robbery

It seemed proper to exhibit at length the reasons which influenced legal provisions so penal as those contained in the 35th article of the Regulations of 1772; and in justification of such part of them as relate to the convicted offender himself, it may be remarked, that they are strictly consistent with the Mohummudan law of *Seeásut*, as explained in the preceding section. The fine upon the village, of which the offender is an inhabitant, might also be justified, if regulated by a due regard to circumstances; especially to a neglect of means, either of preventing the commission of the offence, or of apprehending the offender. But the disposal of the family of the criminal, to pass their lives in slavery, without proof of their participation in the criminality upon which so heavy a sentence is grounded, cannot be reconciled with justice or humanity; and it must therefore be satisfactory to note, that if this part of the rule was (under the discretion vested in the Government)

ever enforced ; it has long since ceased to operate.' A restriction indeed in the application of the stated penalty, to professed robbers, and murderers, appears to have been introduced by Mr. Hastings, in the next year, 1773 ; and he, at the same time, submitted to the consideration of Government, in the form of queries for determination, sundry points, upon which the Mohummudan law, or the dispensation of it by the existing courts of judicature, had been found repugnant to the principles, or inadequate to the ends, of justice. His letter upon this subject, dated the 10th July, 1773, is so explicit ; and demonstrates so particular an attention to the principal defects of the Mosulman criminal law, at an early period after the administration of justice, in Bengal, came under the superintendence of the British Government ; that it appears to merit insertion at length in this place.

" The term *decoit*, in its common acceptation, is too generally applied to robbers of every denomination ; but properly belongs only to robbers on the highway, and especially to such as make it their profession, of whom there are many in the woody parts of the district of Dacca, and on the frontiers of the province ; a race of outlaws who live, from father to son, in a state of warfare against society ; plundering and burning villages and murdering the inhabitants. These were intended by the Board, in the 35th article of their judicial regulations, which declares that all such offenders shall suffer death, and their families be condemned to perpetual slavery. Severe and unjust as this ordinance may seem, I am convinced that nothing less than the terror of such a punishment will be sufficient to prevail against an evil, which has obtained the sanction and force of hereditary practice, under the almost avowed protection both of the *zemindars* of the country, and the first officers of the Government. Yet if a careful distinction be not made, the raiat, who, impelled by strong necessity, in a single instance, invades the property of his neighbour, will, with his family, fall a sacrifice to this law ; and be blended in one common fate with the professed decoit, or the murderer. In the *foujdarry* trials nothing appears but the circumstances of the robbery for which the prisoner is arraigned. That he is a decoit is taken upon presumption, and all the world are his enemies. The *Moulavies* in the provincial courts refuse to pass sentence of death on decoits, unless the robbery committed by them has been attended with murder. They rest their opinion on the express law of the *Korân*, which is the infallible guide of their decisions. The court of nizamat, under whose review the trials pass, and whose province it is to prepare the *Futwâs* for the final sentence and warrant of the *Nâzim*, being equally bound to follow the Mohummudan law, confirm the judgment of the provincial court. The Mohummudan law is founded on the most lenient principles, and an abhorrence of bloodshed. This often obliges the sovereign to interpose, and by his mandate to correct the imperfection of the sentence,

Letter from Mr. Hastings, dated 18th July, 1773, proposing a restriction of the penal rule stated, to professed robbers, and murderers. And submitting several points of Mohummudan law found repugnant, or inadequate, to the ends of justice

' The regulations cited are inserted in the 6th Report of the Committee of Secrecy appointed by the House of Commons in 1773 ; but may be more conveniently referred to in the Appendix, or 3d vol. of Sir E. Colebrooke's *Digest of Regulations*, published in 1807 ; in which the judicial, revenue, commercial, and other regulations of the Bengal Government, passed antecedently to those of 1793, have been collected under separate heads ; and furnish the most useful and ready means of ascertaining what rules were in force, at any period, upon the several subjects to which they relate. In like manner the 1st and 2d vols. of this meritorious public work (in which the regulations enacted from the commencement of 1793, to the end of 1806, are abstracted, and digested under distinct heads, alphabetically arranged) must afford to the Company's civil servants, in every department, an easy access to the rules prescribed for their guidance ; and must essentially promote a general and correct knowledge of the now voluminous code of regulations in force. It may be hoped that the utility of this work will suggest a continuation of it ; or the publication of a new edition (which might be considerably abridged) brought down to a recent period.

to prevent the guilty from escaping with impunity, and to strike at the root of such disorders as the law will not reach. It is worthy of remark, that the instances, which are recorded in history, of strict and exemplary justice in the princes of that religion, are all of the most sanguinary kind ; and inflicted without regard to the law, and generally without any regular process or form of trial. I should be sorry to recommend an example of such rigor for the practice of our Government. I mean only by this short discussion to show, that it is equally necessary and conformable to custom, for the sovereign power to depart in extraordinary cases from the strict letter of the law, and to recommend the same practice in the cases now before us. I offer it therefore as my opinion, that the punishments decreed by this Government against professed and notorious robbers be literally enforced ; and where they differ from the sentences of the *adawlut*, that they be superadded to them by an immediate act of Government ; that every convicted felon, and murderer, not condemned to death by the sentence of the *adawlut*, and every criminal who has been already sentenced either to work during life upon the roads, or to suffer perpetual imprisonment, be sold for slaves, or transported as such to the Company's establishment at Fort Marlborough ; and that this regulation be carried into execution by the immediate orders of the Board, or by an office instituted for that purpose in virtue of a general order or commission from the *Názim*. By these means the Government will be released from a heavy expense in erecting prisons, keeping guards in monthly pay, and in the maintenance of accumulating crowds of prisoners. The sale of the convicts will raise a considerable fund, if these disorders continue. If not, the effect will be yet more beneficial. The community will suffer no loss by the want of such troublesome members, and the punishment will operate as an example much more forcible and useful than imprisonment, fines, or mutilation. The former, to a people addicted to their ease, and who see in such a condition only an exemption from the necessity of daily labor, loses much of its terror. Fines fall with unequal weight on the wealthy and on the indigent. They are unfelt by the first ; they prove equivalent to utter ruin or perpetual imprisonment to the last. And mutilation, which is too common a sentence of the Mohummudan courts, though it may deter others, yet renders the criminal a burthen of the public, and imposes on him the necessity of persevering in the crimes which it was meant to repress."

"I beg leave to subjoin the following queries for your determination, as they have occurred to me in the proceedings of the *adawlut* already referred to. I have annexed my opinion to each.

"1st. Whether the *Futwá*, or decree of the *nizamut adawlut*, after it shall have received the confirmation of the *Názim*, shall be carried into execution precisely in the terms of his warrant, or whether this Government shall interfere in adding to, or commuting, the punishment, in cases wherein it shall appear inadequate to the crime, or ineffectual as a check?"

"Although we profess to leave the *Názim* the final judge in all criminal cases, and the officers of his courts to proceed according to their own laws, terms, and opinions, independent of the control of this Government ; yet many cases may happen in which an invariable observance of this rule may prove of dangerous consequence to the power by which the Government of this country is held, and to the peace and security of the inhabitants. Whenever such cases happen, the remedy can only be obtained from those in whom the sovereign power exists. It is on these that the inhabitants depend for protection, and for the redress of all their grievances ; and they have a right to the accomplishment of this expectation, of which no treaties nor casuistical distinctions can deprive them. If therefore the powers of the *nizamut* cannot answer these salutary purposes ; or, by an abuse of them, which is much to

Queries submitted by Mr Hastings for the determination of the Council, relative to the provision, and administration of the Mohummudan law

be apprehended from the present reduced state of the *Názim*, and the little interest he has in the general welfare of the country, shall become hurtful to it; I conceive it to be strictly conformable to justice and reason, to interpose the authority or influence of the Company, who, as *Dewan*, have an interest in the welfare of the country; and as the governing power, have equally a right and obligation to maintain it. I am therefore of opinion, that whenever it shall be found necessary to supersede the authority of the *Názim*, to supply the deficiencies, or to correct the irregularities, of his courts, it is the duty of this Government to apply such means as in their judgment shall best promote the due course and ends of justice; but that this license ought never to be used without an absolute necessity, and after the most solemn deliberation. In many cases it may not be difficult to obtain the Nabob's warrant for such deviations from the ordinary practice, as may be requisite; and it were to be wished, that they could be always enforced by his authority; but I see so many ill consequences, to which this would be liable, both from his assent and from his refusal, that I am rather inclined to propose, that every act of this kind be superadded to his sentence by our own Government. Although this is my opinion upon the question as it respects the rights of justice, and the good of the people, I am sorry to add, that every argument of personal consideration strongly opposes it, having but too much reason to apprehend, that while the popular current prevails, which over-runs every sentiment of candor towards the Company and its agents, it will be dangerous both to our character and fortunes to move a step beyond the plain and beaten line; and that, laudable as our intentions were, we have already done too much. My duty compels me to offer the advice which I have given; and to that I postpone every other consideration."

"2d. Whether the distinction which is made by the Mohummudan law, between murder perpetrated with an instrument formed for shedding blood, and death caused by a deliberate act, but not by the means of an instrument formed for shedding blood, shall be admitted; and whether the fine imposed on the latter shall be allowed as a sufficient punishment?"

"If the intention of murder be clearly proved, no distinction should be made with respect to the weapon by which the crime was perpetrated. The murderer should suffer death, and the fine be remitted. I am justified in this opinion by good authorities, even among the Mosulmans, although the practice is against it. I will venture to appeal to the abstract of the proceedings which accompanies this for a proof of the inequality and injustice of the decisions founded on this strange distinction; besides the evil tendency which it derives from the little dread an indigent offender feels of a penalty which he knows can never be literally inflicted upon him; and which I fear is frequently the cause of murder, as it serves to screen the crime of robbery with no additional consequence to the criminal. I beg leave to quote an instance in the proceedings above referred to. A man held the head of a child under water till it was suffocated, and made a prize of her clothes and the little ornaments of silver which she wore. It was evident that his object was no more than robbery, and murder the means both of perpetrating and concealing it. There is too much cause also to suspect the extraordinary manner, in which the murder was committed, was suggested by the distinction made by the law in question, by which he was liable to no severer retribution than for the simple robbery; whereas he would have been sentenced to suffer death, had he killed the deceased with a knife or a sword, although he might have been impelled to it by sudden passion, and not premeditated design. Yet for this horrid and deliberate act, he is pronounced guilty of manslaughter only; and condemned to pay the price of blood, which seems invariably fixed at the sum of rupees 3333 5 4.

" 3d. Whether the punishment decreed by the 35th article of the judicial regulations, formed by the Board, shall be carried into execution without the sentiments of the nizamat adawlut, or the warrant of the *Názim* ; and in what manner ?"

" Upon this question I have already declared my opinion in the affirmative. I would recommend that every case, to which this ordinance may be applied, be laid before the Board, and their sanction obtained for its being carried into execution. I submit it to their consideration, whether it may not be expedient to appoint some office, which shall have it in special charge to record such extraordinary proceedings, to prepare them for the judgment of the Board, and to execute their orders upon them.

" 4th. Whether the privilege granted by the Mohummudan law to the sons or nearest of kin, to pardon the murderers of their parents or kinsmen, shall be allowed to continue in practice ? or in what manner the Government shall proceed in cases of this kind, if it shall be judged expedient to make an example of the criminals, in opposition to the letter of the law, and the sentences of the court of adawlut ?"

" This law, though enacted by the highest authority which the professors of the Mohummudan faith can acknowledge, appears to be of barbarous construction, and contrary to the first principle of civil society, by which the state acquires an interest in every member which composes it, and a right in his security. It is a law, which, if rigidly observed, would put the life of every parent in the hands of his son ; and by its effect on weak and timid minds, which is the general character of the natives in Bengal, would afford a kind of pre-assurance of impunity in those who were disposed to become obnoxious to it. If the *Názim* cannot be influenced to abolish totally this savage privilege, which we know is not universally admitted ; or the courts of justice to diffuse it ; I am of opinion that the Government should interfere, by its own authority, to prevent its taking effect, by causing the sentence to be executed, without leaving an option in the children or kinsmen to frustrate it by their pardon."

" 5th. Whether the law which enjoins the children, or nearest of kin to the person deceased, to execute the sentence passed on the murderers of their parents or kinsmen, on account of its tendency to cause such crimes to pass with impunity, shall be permitted to continue, or whether it shall not be abolished by a formal act of Government ?"

" This law, supposed of the same divine original, is yet more barbarous than the former ; and in its consequences more impotent. It would be difficult to put a case, in which the absurdity of it should be more strongly illustrated, than in one now before us, of a mother condemned to perish by the hands of her own children for the murder of her husband. Their age is not recorded, but by the circumstances, which appear in the proceedings, they appear to be very young. They have pardoned their mother. They would have deserved death themselves, if they had been so utterly devoid of every feeling of humanity, as to have been able to administer it to her who gave them life. I am of opinion, that the courts of justice should be interdicted from passing so horrid a sentence, by an edict of the *Názim*, if he will be persuaded to it ; by the Government, if he refuses."

" 6th. Whether fines, inflicted for manslaughter, shall be proportioned to the nature of the crime, as the Mohummudan law seems to intend ; or both to the nature and degree of the crime, and to the substance and means of the criminal ?"

" If the fine exceeds the means of the criminal it must deprive the state of his service, and prove a heavier punishment than the law has decreed him."

"7th. Whether the fines shall be paid to the *Názim*, or taken by the Company as *Dewan*? or, whether they shall not be set apart for the maintenance of the courts and officers of justice, and for the restitution of the losses sustained by the inhabitants from decoits or thieves?"

"It may be dangerous to admit of such a right in the *Názim*. It cannot be better or more equitably employed, than for the uses expressed in the concluding terms of the question."

"Although it was incumbent upon me to deliver my own opinion upon the above references, while I requested that of the Board, I have offered it with diffidence, and I confess with some reluctance, knowing the objections to which every kind of innovation is liable, but more especially in the established laws, or forms of justice. But I conceive, that the points which I have offered to your consideration will be found, in reality, not so much to regard the laws in being, as the want of them; a law which defeats its own ends and operation being scarce better than none. Whatever your determination shall be concerning them, I shall most readily acquiesce in, and shall give my heartiest assistance to its effectual execution."

On the 31st August, 1773, the other members of the Government, having considered the letter addressed to them by Mr. Hastings, recorded their opinion upon it in the following terms:—"The Board are fully sensible of the justness and propriety of the President's remarks upon the criminal law of this country: their sentiments in general coincide with his: and they are equally convinced with him of the absolute necessity that a power should exist to control and superintend the sentences of the Mohummudan judges; and where the letter of the law appears clearly repugnant to the principles of good government and common sense, to apply such a remedy as the case may require; for without this interposition, it is evident, from the instances given by the President, that the most atrocious criminals might escape with impunity, by means of a precaution in the manner of perpetrating the crime; by the privilege enjoyed by individuals of remitting the punishment; and by the many nice distinctions which the expounders of the *Korán* have introduced. In order to prevent these abuses, and to provide a remedy for extraordinary evils, the sovereign power, in every Mohummudan state, has reserved to itself the right of interposing with its authority; and of issuing such mandates as are evidently necessary for the benefit of society; and for that personal security which every member of a community is entitled to. In this country it has not only been the custom, but seems to be a maxim interwoven in the constitution, that every case of importance, where the precise letter of the law would not reach the root of the evil, should be submitted to the judgment of the *Hakim*, or ruler of the country, by an express reference added to the sentence. In a point however of so delicate and important a nature, the Board would wish to consider it with the benefit of the presence and councils of the President; and be furnished with the fullest information before they come to any determinate resolution. They are sensible of that difficult situation in which they are placed; and would wish, with the President, that where a deviation from the strict letter of the law becomes indispensable, it could be enquired into by officers appointed by the *Názim*, and enforced by his warrants."

Opinion of the other members of the Government upon the points submitted by Mr Hastings

The President was accordingly requested to ascertain the sentiments of the *Newab*, and his officers, upon the subject under consideration; and as, in consequence of the abolition of the controlling council of revenue at Moorshedabad, the nizamut adawlut had, in the preceding year, been removed to the Presidency, it was proposed, with a view to prevent the delay experienced, in transmitting the *Futwás* of the nizamut adawlut for the *Newab's* warrant, that a person on his part should be appointed to reside in Calcutta, with

The nizamut adawlut which had been established at Moorshedabad in 1772, removed to Calcutta in the same year, and the Darogah of it placed



under the control of the Governor.

authority to affix the *Názim's* seal to warrants issued for the execution of sentences approved by the law officers of the nizamat adawlut. This arrangement was accordingly adopted, with the consent of the *Beegum*, on the part of the minor *Newab*; and Sudr-ool-huk Khán, the *Daroghah* of the nizamat adawlut, being appointed to the *Needbut* of this branch of the nizamat, the President of the Council was requested "to superintend him in the exercise of his office; as well in revising sentences of the adawlut; as in passing the warrants and affixing the seal." This superintendence vested in the President and Governor a general control over the administration of criminal justice; and it appears from the public records to have been assiduously and beneficially exercised by Mr. Hastings, during a period of eighteen months (in the course of which, viz. on the 19th April, 1774, a new police establishment, consisting of foudjars, tanadars, and pikes, was provided;<sup>1</sup>) but on the 14th April, 1775, he desired to relinquish his trust, as finding the duty of it too heavy, and the responsibility too dangerous. The superintendence and control of the administration of criminal justice were, in consequence, transferred to Mohummud Ruzá Khán; who, in October, 1775, was, at the recommendation of the Governor and Council, appointed *Naib Názim*, as well as guardian of the young *Newab* Mobárúk oo-Doula; and the court of nizamat adawlut was removed back from Calcutta to Moorshedabad.<sup>2</sup>

A police establishment of foudjars, tanadars, and pikes, provided in 1774. Superintendence of criminal justice transferred to the *Newab* Mohummud Ruzá Khán, as *Naib Názim*, in 1775.

Establishment of foudjars and tanadars abolished; and powers vested in the judges of the dewanny adawluts, as magistrates in 1781.

Office of remembrance of criminal courts established to receive reports, and enable Government to watch over the administration of criminal justice.

Powers vested in the magistrates by a regulation for

On the 6th of April, 1781, the establishment of foudjars and tanadars, which had not been found to produce the good effects intended by this institution, was abolished; and the judges of the court of dewanny adawlut were "invested with the power, as magistrates, of apprehending decoits, or persons charged with the commission of any crimes, or acts of violence, within their respective jurisdictions." They were not, however, empowered to try or punish such persons; nor to detain them in confinement; but were required to "immediately send them to the *Daroghah* of the nearest foudjary court with a charge in writing setting forth the grounds on which they had been apprehended." At the same time, to enable Government to observe the effects of the authority thus entrusted to the judges of the civil courts; as well as to any *zemindars*, who, with the permission of Governor General and Council, might be invested with similar police jurisdiction; and to watch over the general administration of criminal justice; an office was established at the Presidency, under the immediate control of the Governor General, to receive monthly returns and reports from the magistrates, and from the *Naib Názim*; to arrange which, and to maintain an effectual check on all persons empowered with the administration of criminal justice, an officer was appointed to act under the Governor General, with the title of remembrancer of the criminal courts.<sup>3</sup>

In June, 1787, when, in consequence of instructions from the court of directors, the offices of collector, judge, and magistrate (except in the cities of Dacca, Moorshedabad, and Patna), were united in the same person; but

<sup>1</sup> See the plan of this establishment, and the grounds upon which it was founded, in the proceedings of the Governor and Council, under date the 19th April, 1774, page 120, of Mr. Colebrooke's compilation before noticed. It is only necessary to remark here, that all persons "convicted of receiving fees, or other pecuniary acknowledgments, from robbers, knowing them to be such, or of abetting or conniving in any shape at their practices," were declared equally criminal with them, and punishable with death.

<sup>2</sup> The proceedings of Government, connected with this measure, are included in Mr. Colebrooke's compilation, p. 125 to 128.

<sup>3</sup> Vide Resolutions of Government respecting the arrangements made in April, 1781.—P. 128 to 130 of Mr. Colebrooke's compilation. But they do not contain any modification of, or addition to, the provisions of the Mohummudan law.

under distinct rules for his guidance in each capacity; a regulation, consisting of twenty-nine articles, was enacted, and printed, for "the administration of justice in the *foujdarry* or criminal courts, in Bengal, Behar, and Orissa." By this regulation it was made the duty of the magistrate "to apprehend all murderers, robbers, thieves, house-breakers, or other disturbers of the peace; and to send them to take their trial, accompanied with a written charge in the Persian language, to the nearest *foujdarry* court." The magistrate was "further invested with power to hear and determine, without any reference to the *foujdarry* courts, all complaints or prosecutions brought before him for petty offences, such as abusive language, or calumny, considerable assaults or affrays; and to punish the same, when proved, by corporal punishment not exceeding fifteen rattans; or imprisonment not exceeding the term of fifteen days;" but, in all cases affecting either the life or limbs of the party accused, or subjecting him to a greater punishment than that above specified, "the case was ordered to be referred to the nearest *foujdarry* adawlut, the *Daroghah* of which, with respect to the trial of causes, was declared totally independent of the magistrate; but subject in every respect to the *Newab* Mohummud Ruzá Khán, in his capacity of *Naib Názim*," who was directed to "correspond with the Governor General, and members of the criminal courts, upon all *foujdarry* subjects, as heretofore." The other detailed provisions, of the regulation passed on the 27th June, 1787, do not call for particular mention in this place; and have been superseded by the regulations subsequently enacted.

The power vested in the magistrates, to take cognizance of petty offences, obviated in some degree the hardship and inconvenience which had before been experienced, from the necessity of delivering over for trial, to the *Daroghah* of the *foujdarry* court, all parties charged with a breach of the peace, however slight, or any other criminal act, however trivial in its nature and consequences. But as all crimes of consequence were still exclusively cognizable by the *Naib Názim*, and his subordinate officers; as the sentences of the *nizamut* adawlut, held at Moorshedabad under the superintendence of the *Newab* Mohummud Ruza Khán, were final; and not notified to Government until they had been carried into execution; as the judges and officers of the inferior criminal courts were appointed by the *Naib Názim*, and removable at his pleasure; and as he possessed an almost exclusive control over those courts and their proceedings; many defects in the Mohummudan law, and abuses in the administration of it, were left unremedied; and continued to prevail, till the latter part of the year 1790; when the system now in force (except that the offices of magistrate and collector had not then been separated) was introduced by Marquis Cornwallis.

In his Lordship's minute recorded on the 1st December, 1790, after noticing the measures adopted for amending or rendering more efficient the criminal jurisprudence of the native government, from 1773 to 1787, he stated the following information and suggestions:—"Still the general state of the administration of criminal justice throughout the provinces is exceedingly and notoriously defective. With a view to ascertain more particularly the nature and causes of the defects, and to collect the necessary information for remedying them; I directed some queries to be stated to the magistrates of the several districts, from their answers to which it will appear that the evils complained of proceed from two obvious causes: 1st, The gross defects in the Mohummudan law; and 2dly, The defects in the constitution of the courts established for the trial of offenders. A provision against the first of these

the administration of justice in the *foujdarry* courts, passed in 1787.

Advantages derived from empowering the magistrates to take cognizance of petty offences.

But many defects in the Mohummudan law, and abuses in the administration of it, by the *Naib Názim*, and his officers, still left unremedied.

Minute of Marquis Cornwallis in 1790, stating the existing defects, and proposing amendments, which introduced the system now in force

<sup>1</sup> See this regulation in Mr. Colebrooke's compilation—P. 131 to 140.

defects cannot otherwise be made than by our correcting such parts of the Mohummudan law as are most evidently contrary to natural justice, and the good of society. That this Government is competent to such an amendment of that law, as may appear thus essentially necessary, cannot, I think, admit of a doubt; since being entrusted with the government of the country, we must be allowed to exercise the means necessary to the object and end of our appointment; besides that we appear to possess a sufficient legal recognition of the right in question from this, that the alterations made in the established Mohummudan law of the country by the first code of judicial regulations of 1772, and more particularly that entire alteration, and new and very severe provision therein contained, for the punishment of decoits, together with the superintendence and control over all the new criminal courts, which the said regulations vested in the Company's covenanted servants, stand both fully submitted to Parliament in the sixth report of the committee of secrecy, already quoted, as a discretionary act of legislation by the President and Council in the year 1772; and yet so far was the Parliament from disapproving thereof, or limiting in any respect the authority of our Government in India, that with this information before it, and having these reports as the ground work of the law then passed, the Act of the 13th of George the Third, Chapter 63d, and Section 7th, vests the ordering, management, and government, of all the territorial acquisitions and revenues in the kingdoms of Bengal, Behar, and Orissa, in the Governor General and Council, for such time as the territorial acquisitions and revenues shall remain in the possession of the said Company, in like manner (as the said Act recites) to all intents and purposes whatever, as the same now are, or at any time heretofore might have been, exercised by the President and Council, or Select Committee, in the said kingdom. And as it was then before the legislature that the President and Council had interposed, and altered the criminal law of the country; such alterations, and all future necessary amendments thereof, appear, by the above clause, to be legally sanctioned and authorized. As we thus appear to possess authority to introduce any necessary amendments in the laws of the country, it is surely incumbent on us not to allow any longer the flagrant abuses in the foudarry department, or exercise of criminal justice, according to the Mohummudan law, throughout the provinces; by the most received opinions among the native distributors of which a murderer is not liable to capital punishment, if he commit the act by strangling, drowning, poisoning, or with a weapon, such as a stick or club, on which there is no iron; or by such an instrument as is not usually adapted to the drawing of blood. That this part of the law should be abrogated, and the apparent intention of the criminal in such instances made to regulate his sentence, instead of the mere mode of the commission of the crime, seems evidently to follow from the plainest principles of natural reason. It need therefore be only farther observed, that we have the greater encouragement for this alteration from the consideration, that even the Mohummudan law itself is not entirely settled upon the most important distinction; for although the Doctor Aboo Huneefa (by whose sentiments proceedings in criminal cases are generally regulated in India) is of the opinion I wish to see corrected; yet his immediate disciples and successors, Yoosuf and Mohummud, (who were lawyers of the greatest eminence) gave a very different judgment; contending and laying down as a rule of law, that the intention, and not the mode or instrument, should be considered, in cases of deprivation of life by the act of a second person. Sha-reef, a great lawyer, and a follower in general of Aboo Huneefa, says in the beginning of the *Shareefeyah*, "that the punishment of retaliation, or death for death, is denounced against those who commit homicide with an intention apparently malicious, as by wounding with a drawn weapon, or other

dangerous instrument, by which the parts of a body may probably be divided, as with a sharp stone, or by using fire, which acts as powerful as any weapon; but a mulct, or expiation, or penance, is the legal punishment of those manslayers whose intent is not apparent; as if they struck with an instrument which does not generally occasion death, as a wand, or a whip, or a small stone." He makes the *intent* the criterion, and so reasonable and well grounded has this last opinion been found, that both the Mohommudan government, and our own, have from time to time availed themselves of it to award capital punishment against such offenders; as will appear in the late correspondence with the Resident at Benares, and from the proceedings of the President and Council in the year 1773, already quoted."

"The next alteration I would propose is that already alluded to, in regard to the option left to the next of kin to remit the sentence of the law, and pardon the criminal. The evil consequences, and the crimes which thereby escape punishment, are so manifest and frequent, that to take away the discretion in the relations seems absolutely requisite to secure an equal administration of justice, and will constitute a strong additional check on the commission of murder or other crimes, which are no doubt often perpetrated under the idea of an easy escape, through the notorious defect of this part of the existing law; which at first perhaps was confined to appeals or private prosecutions by the next of kin, and had no application to public prosecutions in the name of the sovereign; and which is besides peculiarly inapplicable to this country (however it may have suited the society it was originally intended for), because where Brahmins commit murder on any person of the Hindoo religion, they know that they do so with almost perfect impunity; since in most cases it cannot be expected that any Gentoo will ever desire or be consenting to the death of a Brahmin; of which a case exactly in point is now depending before the board from Benares, where a Brahmin having wantonly killed his wife, has, although confessing and convicted of the crime, been pardoned by her relations. I therefore propose;

"1st. That the doctrine of Yusuf and Mohummod, in respect to trials for murder, be the general rule for the officers of the courts to write the *Futwas* or law opinions applicable to the circumstances of every trial, and that the distinctions made by Aboo Huneefa as to the mode of the commission of murder be no longer attended to; or in other words, that the intention of the criminal, either evidently or fairly inferrible from the nature and circumstances of the case, and not the manner or instrument of perpetration (except as evidence of the intent) do constitute the rule for determining the punishment; a proposition which cannot even be said to be any violation of the law of the Mosulmans; but only a rational preference given to the opinions delivered by two of their most learned doctors, in contradiction to that of their master, from whom, after full consideration, they both dissented; and we have it in evidence before us that the best subsequent, or more modern, law authorities among the Mohommudans, do expressly, in cases where Aboo Huneefa and his said two disciples differ, leave it to the *Hakim*, or ruling power, to make an option between their varying sentiments; upon which ground I think it is plainly our duty to adopt, in all such cases, the opinion of either that shall appear most rational; and fitted to promote the due and impartial administration of justice."

"2dly. That the relations be in future debarred from pardoning the offender; and that the law be left to take its course upon all persons convicted, without any reference to the will of the kindred of the deceased."

"3dly. I think that where the Mohommudan law prescribes amputation of legs and arms, or cruel mutilation, we ought to substitute temporary hard-labor, or fine, and imprisonment, according to the circumstances of the case.

Modifications  
of the Mohum-  
mudan criminal  
law, pro-  
posed by Mar-  
quis Cornwallis.

I am of opinion also that a rule should be made for allowing decoits, and other criminals, to become witnesses against each other, in the manner of King's evidence in England; care being always taken that no person be ever convicted on the sole testimony of accomplices, unless their credit be supported by circumstances."

Provisions made, in consequence, in a Regulation passed on the 3d December, 1790, And in subsequent Regulations of 1791 and 1792.

Re-enacted, with additions, or modifications, in Regulation 9, 1793.

Further extract from minute of Marquis Cornwallis, stating defects in the constitution of the criminal courts, as subsisting in the year 1790.

Provisions to the effect of the Governor General's first and second propositions, above stated, were accordingly included in a regulation, of fifty-two articles "for the administration of justice, in the foudjarry and criminal courts, in Bengal, Behar, and Orissa," passed on the 3d December, 1790. Further provisions for the more effectual attainment of the object of the second proposition, under a scrupulous adherence of the law officers to the prescribed rules of Mohummudan law, as well as for a commutation, in all cases, of the legal penalty of mutilation, to imprisonment and hard labor, and for preventing the religious tenets of witnesses from being considered in any case a bar to the admission of their evidence, were also enacted, on different dates, in the years 1791 and 1792.<sup>1</sup>—But as they were re-enacted, with additions or modifications, in Regulation 9, 1793, hereafter specified, it does not appear requisite to notice them in this place. The rules passed for the guidance of the magistrates, courts of circuit, and nizamat adawlut, on the 3d December, 1790, and during the two succeeding years, were likewise re-enacted, with alterations, by Regulation 9, 1793. It will be sufficient therefore to remark here, that the defects in the constitution of the criminal courts, noticed by Marquis Cornwallis as the second cause of the general imperfect administration of criminal justice, (in addition to those arising from the provisions of the Mosulman law; administered by Mohummudan judges,) were stated in his Lordship's minute, already quoted, to be as follows. "The prisoners whose cases are referred for the final sentence of the nizamat adawlut at Moorshedabad are not tried by that court; but in the subordinate criminal courts of the districts in which they are apprehended. From the time of their commitment by the magistrate, they remain in the custody of the *Daroghah*, or judge of the criminal court, with whom it rests to determine when they shall be tried; what witnesses shall be summoned; to what points they shall be examined; and in what manner their evidences shall be taken down; and as these courts are mostly situated at a great distance from the place of residence of the Nabob Mohummud Ruzá Khán, and the English magistrates upon the spot are prohibited from interfering with their proceedings, it is in the power of the officers, with little probability of detection, to frame proceedings, which, when transmitted to the *Naib Názim*, must inevitably procure the acquittal of the prisoner; or by protracting his trial, to oblige the prosecutors to abandon the prosecution, or agree to a compromise. A reference to the annexed reports from the several magistrates will evince that the enormities daily committed throughout the country, are to be attributed more to these and other abuses, which too generally prevail in the subordinate courts, than to the defects of the criminal law. The length of time which generally elapses between the commitment of a prisoner, and the passing of his sentence, is another evil of the greatest magnitude, resulting from the present constitution of the criminal courts. This delay, even in cases where it does not originate from connivance between the prisoner and the officers of justice, is attended with the most pernicious effects. If the prisoner is at length acquitted, he nevertheless suffers all the consequences of a long and painful imprisonment. If he is convicted, and sentenced to suffer the punishment due to his crime, the

<sup>1</sup> See the whole of the rules passed in 1791 and 1792, as well as the regulation of 3d December, 1790, in Mr. Colebrooke's compilation—p. 141 to 167.

delay defeats the object of his punishment ; which is to deter others from committing the same crime. For it has been justly observed, " that punishment should follow the crime as early as possible, that the prospect of gratification or advantage, which tempts a man to commit the crime, should awaken the attendant idea of punishment." But it is unnecessary to have recourse to the testimonies of the magistrates to prove the abuses practised in these courts. The multitude of criminals with which the jails in every district are now crowded, the numerous murders, robberies, and burglaries, daily committed, and the general insecurity of person and property which prevails in the interior parts of the country, are melancholy proofs of their having long and too generally existed. Having experienced therefore the inefficacy resulting from all the criminal courts and their proceedings being left dependent on the Nabob Mohummud Ruzá Khán, and from the objections which he may be naturally disposed to feel, on the ground of his religion, to any innovations in the prescribed and customary rules and application of Mohummudan law ; we ought not, I think, to leave the future control of so important a branch of government to the sole discretion of any native, or indeed of any single person whomsoever."

On the grounds stated, with a view that the future trials of offenders might be conducted with expedition and impartiality, and that the supreme Government might be enabled to superintend the general administration of criminal justice, it was proposed by Marquis Cornwallis, and provided by the Regulation of the 3d December, 1790, abovementioned, " that the nizamat adawlut, or chief criminal court, be again removed from Moorshedabad and established at Calcutta. That this court (instead of being superintended by a native judge, subject to the control of the President of the Board, as heretofore) do consist of the Governor General and Members of the Supreme Council, assisted by the *Kázee-ool-Koozat*, or head *Kázee* of the provinces, and two *Mooftees*. That the court do exercise all the powers lately vested in the *Naib Názim*, as superintendent of the nizamat adawlut, leaving the declaration of the law, as applicable to the circumstances of the case, to the *Kázee-ool-Koozat* and *Mooftees*, agreeably to former practice. That the decisions of the court be in all cases regulated by the Mohummudan law, under the restrictions contained in the regulations." Four courts of circuit, superintended respectively by two covenanted civil servants of the Company, and each having a *Kázee* and *Mooftee* to assist the judges and expound the Mohummudan law, were at the same time established for the trial of offences not punishable by the magistrates ; and they were directed to hold two general jail deliveries annually at the stations of the several magistrates within their divisions ; commencing their first circuit on the 1st March, and the second on the 1st October, of each year. In cases of acquittal, and of punishment less than death, or imprisonment for life, in which the judges of the courts of circuit might approve the *Futrá* of their law officers, they were empowered to pass a final sentence. But in cases of death or perpetual imprisonment, as well as in all cases where the judges might disapprove the *Futrá* of their law officers, they were required to transmit their proceedings for the sentence of the nizamat adawlut.

Consequent provision made by Regulation of 3d December, 1790, for re-establishing the nizamat adawlut at Calcutta, its constitution, and powers.

Four courts of circuit also established for the trial of offences not punishable by the magistrates. Half yearly jail deliveries to be held by them. And under what restrictions sentence to be passed by them.

Particular rules enacted for guidance of the courts of circuit and nizamat adawlut, will be specified in the next section.

The more particular rules enacted, and now in force, for the guidance of the courts of circuit and nizamat adawlut will be specified in the next section. The remainder of the present section will be confined to the modifications of, or additions to, the Mohummudan criminal law, which have been enacted by the regulations of 1793, and subsequent years.

R. 9, 1793,  
§ 50, 75.  
Rule for deli-  
very of *Futwás*

on trials for  
murder accord-  
ing to the  
doctrine of  
Yousuf and  
Mohummud;  
and for inflic-  
tion of punish-  
ment accord-  
ing to the in-  
tention of the  
criminal, with-  
out regard to  
the instru-  
ment, except  
as evidence of  
the intent.

Extended to  
Benares by R.  
16, 1795, § 22,  
And re-enacted  
for the ceded  
provinces,  
by R. 7, 1803,  
§ 19; and R. 8,  
1803, § 10.

The above rule  
expressly de-  
clared to in-  
clude wilful  
homicide by  
poison, or by  
drowning.

R. 8, 1799, § 5,  
re-enacted for  
the ceded pro-  
vinces by First  
Clause of § 10,  
R. 8, 1803.

Provisions  
made for doing  
away opera-  
tion of the will  
of the heirs, in  
cases of mur-  
der.

R. 9, 1793,  
§ 52, 55, 76.  
Rescinded by  
R. 4, 1797, § 2,  
and two fol-  
lowing sec-  
tions substi-  
tuted.

Re-enacted for  
ceded provin-  
ces, by R. 7,  
1803, § 15, and  
R. 8, 1803, § 11.  
R. 4, 1797, § 2,  
re-enacted for  
ceded provin-  
ces in R. 7,  
1803, § 15, c. 2.  
Court of cir-  
cuit how to  
proceed in  
taking *Futwás*  
from their law  
officers, and  
passing sen-  
tence there-  
upon, in cases  
of homicide.

### *Regulations of 1793, and subsequent years.*

\* By Section 50, Regulation 9, 1793, it was provided, that on trials for murder the law officers of the courts of circuit "shall deliver their *Futwás* or law opinions, upon the case, according to the doctrines of Yousuf and Mohummud;" and by Section 75, of the same regulation, a similar provision was made respecting the *Futwás* of the law officers of the nizamat adawlut, with a further declaration, that the distinctions made by Abou Huneefah and his two disciples, "as to the mode of committing murder, shall not be adhered to by the nizamat adawlut; but the intention of the criminal, evidently or fairly inferable from the nature and circumstances of the case, and not the manner or instrument of perpetration (except as evidence of the intent) shall constitute the rule for determining the punishment." These provisions were extended to Benares by Section 22, Regulation 16, 1795, and were re-enacted for the ceded provinces by Section 19, Regulation 7, and Section 10, Regulation 8, 1803. It was also expressly declared by Section 5, Regulation 8, 1799, (re-enacted for the ceded provinces in the First Clause of Section 10, Regulation 8, 1803,) that "wilful homicide by poison or by drowning, when the intention of poisoning or drowning, may be evident, is included in the above rule; and that in all such cases the nizamat adawlut, whatever may be the *Futwá* of their law officers, are to sentence the prisoner to suffer death; provided they judge him fully convicted of wilful murder, and do not consider him a proper object of mercy."

By Sections 52, 55, and 76, Regulation 9, 1793, provisions were made for doing away all operation of the will of the heirs in cases of murder, when they might not demand *Kisás*; or when they might not appear to prosecute, or from minority might not be legally entitled to claim retaliation of death. But the whole of the cases, in which the Mohummudan law allows an option to the heirs of the slain, not having been expressly mentioned, a doubt rose upon the propriety of applying, to the cases not particularized, the rules contained in the above sections; which were therefore rescinded by Section 2, Regulation 4, 1797; and the two following sections (re-enacted for the ceded provinces in the second clause of Section 15, Regulation 7, and in Section 11, Regulation 8, 1803,) were substituted for them.

"In trials for murder before the court of circuit, after the proceedings shall have been concluded in the manner prescribed by Section 47, Regulation 9, 1793, the law officer of the court, who may be present during the trial, shall be required by the judge to declare whether the prisoner is convicted of the charge against him; and shall subscribe his answer on the record of the court's proceedings. If the law officer shall declare the prisoner to be not guilty, the judge shall pass an immediate sentence of acquittal, and order him to be discharged; unless he shall see cause to disapprove such verdict, in which case he is to refer the proceedings on the trial for the sentence of the nizamat adawlut. If the answer of the law officer shall declare the prisoner to be convicted of wilful murder (*Kull-i-úmd*); the judge, without making any reference to the heir or heirs of the slain, shall require the law officer to declare the punishment to which the prisoner convicted would be liable according to the Mohummudan law, supposing all the heirs of the slain, entitled to prosecute the prisoner for *Kisás*, to have

<sup>1</sup> Corresponding with the First Clause of Section 15, Regulation 7, 1803, for the ceded provinces.

attended and prosecuted him, at an age competent to demand *Kisás*, and to have demanded *Kisás*. The *Futwá* of the law officer upon this reference shall be also subscribed on the record of the court's proceedings; and whether the *Futwá* declare the prisoner liable to suffer death, as must be the case in most instances of conviction of wilful murder, under the supposed demand of *Kisás* by the heirs of the slain; or, whether it declare the prisoner not liable to capital punishment, from the heirs of the slain not being legally entitled to demand *Kisás*, or the failure of retaliation from the parties standing in the relation of parent and child, or master and slave, or otherwise; the judge is, in either case, to refer the proceedings for the sentence of the nizamat adawlut. Should the answer of the law officer to the first reference acquit the prisoner of wilful murder; but convict him of homicide, of any one of the four denominations distinguished in the Mohummudan law, (viz. *Shibah-i-úmd*; *Kutl-i-klutá*; *Kutl-i-káem-mokám-i-klutá*; and *Kutl-ba-subub*) the law officer is to declare the prescribed penalty for the same according to the Mohummudan law; and if his *Futwá* should declare the *Diyyat*, or price of blood, to be the whole, or part, of the legal punishment, the court of circuit is to commute the fine to imprisonment for such period as it may consider adequate to the offence; and its sentences in such instances, as in all others according to the existing regulations, are to be carried into execution without reference to the nizamat adawlut, if for temporary imprisonment; or referred to that court, if for imprisonment for life; subject to the general provision contained in Section 53, Regulation 9, 1793,<sup>1</sup> for referring to the nizamat adawlut all trials wherein the courts of circuit may disapprove of the *Futwás* of their law officers."<sup>2</sup>

In all cases referred under the foregoing section to the nizamat adawlut, the law officers of that court, provided they shall be of opinion, that the prisoner is duly convicted of murder, shall write their *Futwá* upon the case referred to the law officer of the court of circuit, assuming always that all the heirs of the slain, entitled to prosecute for *Kisás*, attended, and prosecuted at an age which rendered them competent to demand *Kisás*, and that they demanded *Kisás*. But if they shall be of opinion that the prisoner is not duly convicted of wilful murder, they are to state their reasons for such opinion, and whether they consider the prisoner altogether innocent, or convicted of homicide under any of the four denominations distinguished by the Mohummudan law; adding, in the latter case, the legal penalty to which the prisoner is liable; and the court of nizamat adawlut, after considering their *Futwá* so given, with the whole of the proceedings on the case, are either to require further evidence if they see occasion; or to pass such final sentence as may appear consonant to justice, and conformable to the Mohummudan law; with the exceptions and modifications which have been, or may be, authorized by the regulations; and subject to the several provisions therein contained. If in any case, not provided for by the regulations, the Mohummudan law appear to the court repugnant to justice, they are, notwithstanding, to adhere thereto, if in favor of the prisoner, in the case before them;

R. 4, 1797, § 4 re-enacted for ceded provinces in R. 8, 1803, § 11. Law officers of the nizamat adawlut how to deliver their *Futwás* on trials referred under the preceding rule.

And the judges of the nizamat adawlut how to proceed thereupon.

<sup>1</sup> Or Section 22, Regulation 7, 1803, for the ceded provinces.

<sup>2</sup> It is explained in the seventh section of Regulation 17, 1817, that the discretion of the courts of circuit, in the cases of culpable homicide, not amounting to wilful murder, referred to in the provisions here cited from Regulations 4, 1797, and 7, 1803, "is limited by the general rule contained in the seventh clause of Section 2, Regulation 53, 1803, which restricts the courts of circuit, in cases not specifically provided for, from passing a final sentence exceeding corporal punishment of thirty-nine stripes, and imprisonment, with hard labor, for the term of seven years. If, in any instance, this punishment appear insufficient, the judge of circuit is to refer the trial to the nizamat adawlut."



or, if against the prisoner, to recommend a pardon, or mitigation of the punishment, to the Governor General in Council; and at the same time to propose a new regulation to provide against a recurrence of the case."

A complete remedy applied by the preceding rules, to the obstruction to justice from the influence of the heirs of the slain in cases of murder.

But certain cases of wilful homicide, in which the murderer is not liable to capital punishment under the Mohummudan law, still unprovided for. Further rule to provide for such cases, in R. 8, 1799, § 2; re-enacted for ceded provinces in R. 8, 1803, § 15.

By the above rules, which require the law officers to give their *Futwá*, and authorize the nizamat adawlut to pass their sentence, on the supposition that all the heirs of the slain, entitled to prosecute for *Kisás*, have attended, prosecuted, and demanded *Kisás*, a complete remedy was applied to the obstruction of public justice, that had been found to arise from the influence allowed by the Mohummudan law, in cases of murder, to the heirs of the slain. But cases of wilful homicide, in which the party convicted is not, under the Mohummudan law, liable to retaliation of death, from the heirs of the slain not being legally entitled to demand *Kisás*, from the relation of parent and child, master and slave, or otherwise, though directed to be referred for the sentence of the nizamat adawlut, had not been specifically declared liable to capital punishment. It was therefore enacted by Section 2, Regulation 8, 1799, and re-enacted for the ceded provinces by Section 15, Regulation 8, 1803, that "in every case of wilful murder, wherein the crime may appear to the court of nizamat adawlut to have been fully established against the prisoner, but the *Futwá* of the law officers of that court shall declare the prisoner not liable, under the Mohummudan law, to suffer death by *Kisás*, solely on the ground of the prisoner's being father or mother, grandfather or grandmother, or other ancestor of the slain; or one of the heirs of the slain being the child or grandchild, or other descendant of the prisoner; or of the slain having been the slave of the prisoner, or of any other person, or a slave appropriated for the service of the public; or on any similar ground of personal distinction, and exception from the general rules of equal justice; the court of nizamat adawlut, provided they see no circumstances in the case which may render the prisoner a proper object of mercy, shall sentence him to suffer death; as if the *Futwá* of their law officers had declared him liable to *Kisás*; or to suffer death by *Seeásut*, as authorized by the Mohummudan law in all cases of wilful murder, under the discretion vested in the magistrate, with regard to this principle of punishment for the ends of public justice."

To kill another by his or her desire, declared unjustifiable, and liable to the punishment of murder by R. 8, 1799, § 3; re-enacted for ceded provinces by R. 8, 1803, § 16.

It was at the same time declared by Section 3, Regulation 8, 1799, (re-enacted for the ceded provinces by Section 16, Regulation 8, 1803,) that "after the period fixed for the enforcement of this regulation, it shall not justify any prisoner convicted of wilful homicide, that he, or she, was desired by the party slain to put him, or her, to death; and in the event of the prisoner being convicted of the fact to the satisfaction of the nizamat adawlut; and of their seeing no circumstances in the case which may render him, or her, a proper object of mercy; they shall sentence him, or her, to suffer death, whatever may be the *Futwá* of their law officers under the Mohummudan law; which in this instance also, although it withholds *Kisás*, gives a full latitude to the magistrate in the discretionary punishment of *Tázeer* or *Seeásut*; and experience has shown the necessity of inflicting the punishment for murder in such cases, to preserve the lives of many from the effects of passion or revenge, aided (especially in the province of Benares) by the erroneous prejudices of superstition."

<sup>1</sup> The letter of the Regulation here cited, viz. that "it shall not justify any prisoner convicted of wilful homicide, that he, or she, was desired by the party slain to put him or her to death," might be construed to include Brahmins, and other persons, assisting in the burning of Hindoo widows, who devote themselves on the funeral piles of their deceased husbands, or are buried alive with the bodies of their husbands of the weaver cast. But the intention of the regulation has not been considered to extend to such cases. On the contrary, the circular instructions of the nizamat adawlut to

It was also declared by Section 4, Regulation 8, 1799, (re-enacted for the ceded provinces by Section 17, Regulation 8, 1803,) that "if the *Futwá* of

Rule to provide for cases of wilful murder, in which

the zillah and city magistrates, which have been issued under express authority from the Governor General in Council, tolerate, and virtually permit, the lamentable practice referred to, as far as it is allowed by the Hindoo law; but prohibit it, and direct the police officers to prevent it, if practicable, in several cases, of not unfrequent occurrence, in which it has no legal sanction whatever. *Vide* printed circular orders of the nizamat adawlut, cited in the fourth section of this volume, *On the Police*. Whatever opinion may be entertained on the policy, which has hitherto induced the British Government to tolerate the immolation of Hindoo widows, as considered to be in some degree a religious observance, (though it is not a prescribed duty, as may be seen by Mr. H. Colebrooke's Translation of original Texts on the subject, printed in vol. 4 of the 'Transactions of the As. Society') there can be no sufficient, or legitimate reason, for permitting a practice so repugnant to every feeling and principle of humanity, in opposition to the only laws which can be pleaded in justification of it. On this point the sentiments of the Government at home have been in unison with those of the Governments in India; and as the public correspondence on the subject has been printed for the use of the House of Commons, I may be allowed to cite the following passage in a letter from the Honorable Court of Directors to the Government of Fort St. George, dated the 4th March, 1818:—"Though there are great objections to the prohibiting, by legislative enactment, any practice closely interwoven with the religious prejudices of the people; and grown inveterate by long habit; we should, nevertheless, be highly gratified, if, by discouraging and discountenancing this barbarous custom, it might be brought into disrepute; so as to be at length voluntarily abandoned. In the mean while we deem it consistent with the avowed principles of our Government to place this practice under every regulation and restraint that may be reconciled with the precepts of that religious code on which it is founded." Were any argument requisite to show the expediency of adhering to this course of proceeding, so perfectly consistent with the provisions of the legislature (in the Statute 53 Geo. III. cap. 155.) that "the principles of the British Government, on which the natives of India have hitherto relied for the free exercise of their religion, be inviolably maintained," it will be found in the following extract from a "Conference between an advocate for, and an opponent of, the practice of burning widows alive;" which has been published in Bengal, in the vernacular dialect of that province, by a learned Brahmin, well known under the name of Ram Mohun Roy:—

"*Advocate*.—Though what you have advanced from the *Ved*, and sacred codes, against the practice of concremation and postcremation, is not to be set aside, yet we have had the practice prescribed by *Hureet*, and others, handed down to us."

"*Opponent*.—Such an argument is highly inconsistent with justice. It is every way improper to persuade to self-destruction by citing passages of inadmissible authority. In the second place, it is evident from your own authorities and the *Sunkulpu* recited in conformity with them, that the widow should voluntarily quit life, ascending the flaming pile of her husband. But on the contrary, you first bind down the widow along with the corpse of her husband; and then heap over her such a quantity of wood that she cannot rise. At the time too of setting fire to the pile, you press her down with large bamboos. In what passage of *Hureet*, or the rest, do you find authority for thus binding the woman according to your practice? This then is in fact deliberate female murder."

"*Advocate*.—Though *Hureet* and the rest do not indeed authorize this practice of binding, &c. yet were a woman, after having recited the *Sunkulpu*, not to perform cremation, it would be sinful, and considered disgraceful by others. It is on this account that we have adopted the custom."

"*Opponent*.—Respecting the sinfulness of such an act, that is mere talk. For in the same codes it is laid down that the performance of a penance will obliterate the sin of quitting the pile. Or in case of inability to undergo the regular penance, absolution may be obtained by bestowing the value of a cow, or three kahuns of cowries. Therefore the sin is no cause of alarm. The disgrace in the opinion of others is also nothing. For good men regard not the blame or reproach of persons who can reprobate those who abstain from the sinful murder of women. And do you not consider how

one or more of the accomplices may be exempt from *Kisás*, or in which an accomplice in the murder may appear deserving of death. R. 8, 1799, § 4; re-nacted for ceded provinces, by R. 8, 1808, c. 17.

Reference to the Mohammudan law concerning *Kutli-khutá*, or erroneous homicide, which makes no distinction between involuntary homicide in the prosecution of a lawful, or unlawful and murderous intention; though there is evident reason for distinguishing them.

Same reasoning applicable to wounding, maiming, or otherwise injuring one person, in the prosecution of a criminal intent against another. Rules enacted to provide for the due administration of justice in such cases.

the law officers of the nizamat adawlut declare any person, convicted of wilful murder, not liable to suffer death, under the Mohammudan law, on the ground of one or more of his accomplices being exempted from *Kisás*, under any of the circumstances recited in Sections 2, and 3, of this regulation, or on any similar ground of exemption; the court of nizamat adawlut shall, notwithstanding such *Futwá*, sentence the prisoner to suffer death; if in their judgment he be duly convicted, and be not a proper object of mercy; and in all cases, if the accomplice in a wilful murder, though not the principal perpetrator of the murder, shall appear to the nizamat adawlut fully convicted, and deserving of death, they are authorized, under the discretion given by the Mohammudan law in such cases, to sentence the prisoner to suffer death, whether the *Futwá* of their law officers declare the same or otherwise."

Under what has been stated in the preceding section, relative to *Kutli-khutá*, or erroneous homicide, it appears that a person deliberately intending to murder one individual, and accidentally killing another, is not, by the Mohammudan law, held liable to retaliation of death; and that no distinction is made between involuntary homicide, in the prosecution of a lawful intention; as for instance, shooting at a mark and accidentally killing a man; and involuntary homicide in the prosecution of an unlawful and murderous intention; such as shooting at a man with an intention to kill him, and by accident killing another man; or even killing the person intended to be murdered, if any accident intervene, such as the arrow or other instrument of death passing by the person aimed at, and killing him on a rebound; though the intention being in the first case innocent, in the two latter cases criminal, there is evident reason for distinguishing them; and on principles of public justice, which regards the detriment and danger to society from the commission of crimes, rather than the individual injury resulting from them, the homicide actually committed in prosecution of a deliberate intent to commit murder must be held justly liable to the punishment of murder. The same reasoning is equally applicable in cases of a like nature, where a person criminally intending to wound, maim, or otherwise do corporal injury to, one individual, may, in the prosecution of such criminal intention, accidentally wound, maim, or otherwise corporally injure another person. With a view therefore to provide for the due administration of justice in such cases, and to deter all persons from the prosecution of unlawful criminal designs, by

great is the sin to kill a woman; therein forsaking the fear of God, the fear of conscience, and the fear of the *Shasturs*, merely from a dread of the reproach of those who delight in female murder?"

"*Advocate*.—Though tying down in this manner be not authorized by the *Shasturs*, yet we practise it as being a custom that has been observed throughout Hindoosthan."

"*Opponent*.—It never was the case that the practice of fastening down widows on the pile was prevalent throughout Hindoosthan. For it is but of late years that this mode has been followed, and that only in Bengal, which is but a small part of Hindoosthan."

It may be added, that the official statements of *Suttees*, or Hindoo widows burnt or buried alive, in the provinces subject to the presidency of Fort William, during the years 1815, 1816, and 1817, which have been published, and which state the ascertained number in those years to have been no less than 1528; (viz. 380 in 1815; 442 in 1816; and 706 in 1817; chiefly in the province of Bengal, and nearly two-thirds of the whole in the division of Calcutta;) exhibit several instances, in which the sacrifice was not warranted by the *Shastur*, from the minority, cast, or condition, of the unfortunate victim; and others in which it was happily prevented by the authorized interposition of the police officers.

warning them that they will be responsible for acts done by them in prosecution of such designs, the following rules were enacted by Sections 2, 3, 4, 5, and 6, of Regulation 8, 1801, and re-enacted for the ceded provinces by the second and succeeding clauses of Section 10, Regulation 8, 1803.

§ 2. "After the date fixed for the operation of this regulation, any person who may be convicted of having, subsequent thereto, deliberately and maliciously intended to murder one individual, and of having in the prosecution of such intention, accidentally killed another individual, shall, on account of the murderous intention and actual homicide, be liable to the punishment of murder, in like manner as if he had killed the person intended to be murdered. In all such cases, the law officers of the courts of circuit and of the nizamat adawlut (to which court all trials of this description are to be referred) shall be required to state what punishment the prisoner would have been liable to, if he had committed the murder intended by him; and if their *Futwá* shall declare him in such case liable to suffer death, or if under the *Futwá* so given, and the modifications of the Mohummudan law, contained in Regulations 4, 1797, and 8, 1799, or any other regulation, the prisoner be liable to suffer death; the court of nizamat adawlut, provided it be established to their satisfaction that the prisoner intended to commit the crime of deliberate and malicious murder, and that the homicide charged against him was actually committed by him in the prosecution of such murderous intention, shall sentence the prisoner to suffer death; unless they shall see any circumstances which may, in their judgment, render him a proper object of mercy; in which case they are to recommend to the Governor General in Council either the pardon of the prisoner, or a mitigation of his punishment, as they shall judge proper; stating, in either case, their reasons for the pardon or mitigation of punishment recommended by them."

§ 3. "The rule contained in the preceding section is to be considered equally applicable to any other cases of homicide, which may be declared by the law officers of the courts of circuit, or nizamat adawlut, to be within the Mohummudan law of *Kut-i-khotá*, *Kut-i-káem-mokám-ba-khotá*; or other legal denominations of accidental homicide; but in which the prisoner shall be clearly convicted of having committed the homicide proved against him, with a murderous intention; such as if carried into effect would have subjected him to a sentence of death; or with a deliberate intention, to commit any crime, that, if committed in pursuance of the prisoner's criminal design, would have rendered him liable to a sentence of death."

§ 4. "In like manner, after the date fixed for the operation of this regulation, any person who may be convicted of having, subsequent thereto, unlawfully and maliciously intended to wound, maim, or otherwise do corporal injury to, one individual; and of having, in the prosecution of such intention, accidentally wounded, maimed, or otherwise corporally injured, another individual, shall be held punishable for the act committed by him with such unlawful and malicious intention, in like manner as if such act had been perpetrated on the person intended to have been wounded, maimed, or otherwise injured. The law officers of the court of circuit, in such cases, shall be required to state the punishment to which the prisoner would have been liable if he had committed the act of which he is convicted, upon the person intended to have been wounded, maimed, or otherwise injured by him; and the courts of circuit shall pass sentence accordingly, or refer the trial to the court of nizamat adawlut, as the case may be referrible to that court, or otherwise, under the general regulations."

§ 5. "In trials referred under the preceding section to the court of nizamat adawlut, the law officers of that court shall also declare in their *Futwá* to what punishment the prisoner would have been liable, if the act, of

R. 8, 1801, § 2, 3, 4, 5, 6; re-enacted for ceded provinces by second and succeeding clauses of § 10, R. 8, 1803. Section 2.

A person convicted of having intended to murder one individual, and having in the prosecution of such intention, killed another individual, declared liable to the punishment of murder.

Courts of circuit, and nizamat adawlut, how to proceed in such cases.

#### Section 3.

The foregoing rule extended to all cases of accidental homicide, committed in prosecution of a murderous intention, or any criminal design, which if carried into effect, would have subjected the offender to a sentence of death.

#### Section 4.

In like manner accidentally wounding, maiming, or otherwise injuring one person, in prosecution of an unlawful malicious intention to wound, maim, or injure another, declared punishable as if the act had been committed upon the party intended.

Courts of circuit how to proceed in such cases.

#### Section 5.

Court of nizamat adawlut how to pro.

ced on such cases, when referred to that court.

Section 6. Provision for commutation of the *Diyut*, to imprisonment, contained in Sec. 8. Reg. 4. 1797, not applicable to the cases of accidental homicide provided for by the above rules. But to be in force, as heretofore, in other cases.

Unless the homicide shall appear to have been committed by misadventure, in the prosecution of a lawful act, and without any malignant intention.

Remarks upon Mohummudan law of *Tázeer* and *Seeásut*, as stated in the preceding section; with discrimination of cases to which a discretionary power of correction and punishment appears applicable.

*Futwás* of the law officers found to be often governed by a consideration of the degree of proof against the accused, rather than by the guilt and criminality established against him. Necessity, in consequence, for determining the punishment to be adjudged by the criminal courts

which he is convicted, had been committed as intended by him; and the court after considering such *Futwá*, with the whole of the proceedings in the case, are to pass such sentence on the prisoner, short of death, as they may judge adequate to his offence; or if they consider him a proper object of mercy, may recommend his pardon to the Governor General in Council, stating their reasons for the pardon recommended by them.”

§ 6. “Such part of Section 3, Regulation 4, 1797, as authorizes the courts of circuit, in cases of *Kutli-khotá*, and other cases of accidental homicide, when the prisoner may be declared liable to the *Diyut*, or price of blood, to commute such price to imprisonment, is not to be considered applicable to any of the cases noticed in Sections 2 and 3, of this regulation: but is to be in force, as heretofore, with regard to cases of homicide not otherwise provided for by the above sections. The courts of circuit, however, are not to sentence the prisoner to suffer any imprisonment, or other punishment, in the cases of accidental homicide mentioned in Section 3, Regulation 4, 1797, although the *Diyut* should be declared by their law officers to be payable under the Mohummudan law, if the homicide shall clearly appear to have been committed by misadventure in the prosecution of a lawful act, and without any malignant intention.”

From what has been stated in the preceding section, relative to the third general head of the Mohummudan criminal law, *Tázeer* and *Seeásut*, it appears that the Sovereign and his delegates are invested with a discretionary power of correction and punishment in three cases. 1st. In the case of offences for which no specific penalty of *Hudd*, or *Kisás*, has been provided by the law; being, for the most part, offences not of a heinous nature; the punishment of which is left discretionary, below the measure of the specific penalties, for the correction and amendment of the offender. 2dly. For crimes within the specific provisions of *Hudd* and *Kisás*; when the proof against the person accused, of the commission of such crimes, may not be such as the law requires for a judgment of the specific penalties; though sufficient to establish a strong presumption of guilt: or although the proof be complete, as required for a sentence of *Hudd* or *Kisás*, when such sentence is barred by a remission of the claim to retaliation in cases of *Kisás*, or by any of the special exceptions which, under the general denomination of *Shoobah*, are considered by the prevalent authorities of Mohummudan law to bar a judgment for the specific penalties of that law. 3dly. For the most heinous crimes, in a high degree injurious to society, and particularly for repeated offences of this description, which, upon principles of public justice, for the safety of the community, may appear to require exemplary punishment, beyond the prescribed penalties and ordinary provisions of the law. In the adjudication of punishments under the discretion thus allowed by the Mohummudan law, especially in the second of the three cases stated, the *Futwás* of the law officers, attached to the criminal courts, were found to be often governed by a consideration of the degree of proof against the party accused, rather than by the degree of guilt, and criminality of the act established against him; and the penalties awarded by them were, in many instances, adjudged on insufficient proof of the charge: whilst, in others, the penalty declared by them was inadequate to the heinousness of the offence, of which the prisoner had been convicted. It was therefore deemed necessary that provision should be made for determining the punishment to be adjudged by

By Section 3, Regulation 14, 1810, more fully cited in the sequel, two judges of the court of nizamat adawlut are empowered to grant a remission or mitigation of punishment, according to the evidence and circumstances of the case, without a reference to the Governor General in Council.

the criminal courts in all cases wherein a discretion is left by the Mohummudan law; as well to guard against the infliction of any punishment without sufficient evidence of guilt; as to maintain the uniform and adequate punishment of offenders, when convicted, according to the criminality of the offences established against them. The following rules were accordingly enacted for this purpose (including the ceded provinces) by Section 2, of Regulation 53, 1803.

*First.* "In all trials before the courts of circuit, wherein the Mohummudan law officers of those courts may consider the prisoner liable to discretionary punishment, (*Tazeer, Acoobut, or Seeásut,*;) their *Futwá* shall declare the same generally, with a statement of the grounds on which the prisoner is adjudged subject to discretionary punishment; leaving the measure of punishment, in such cases, to be determined by the judge of circuit before whom the trial may be held, or by the court of nizamat adawlut, under the provisions contained in this, or any other regulation. *Second.* "If the crime, for which the prisoner is declared liable to discretionary punishment, in such cases, shall have been specifically provided for by any subsisting regulation, denouncing the penalty to be adjudged on proof of the commission of such crime; and the judge, before whom the trial may be held, shall consider the crime to have been established against the prisoner; whether by his free and voluntary confession; or by the testimony of credible witnesses; or by strong circumstantial evidence; he shall sentence the prisoner to suffer the punishment for such crime prescribed by the regulations; or, if the case be referrible under the regulations for the sentence of the nizamat adawlut, shall transmit the trial, with his opinion thereupon, to that court." *Third.* "If the crime, for which the prisoner is declared liable to discretionary punishment, shall not have been specifically provided for by any regulation, denouncing the penalty to be adjudged on proof of the commission of it; but be such as would have subjected the prisoner to the specific penalty of *Hudd*, or *Kisás*, provided by the Mohummudan law, if he had been convicted by full legal evidence; and the *Futwá* of the law officer shall declare him liable to discretionary punishment in consequence of the evidence not being such as the Mohummudan law requires for a sentence of *Hudd* or *Kisás*; though sufficient to convict the prisoner on strong presumptive proof or violent presumption (*Ghálíb-oo-zun*;) the judge, before whom the trial may be held, provided he concur in the conviction of the prisoner, shall require the law officer to declare, by a second *Futwá*, to what specific punishment (of *Hudd* or *Kisás*) the prisoner would have been liable, under the Mohummudan law, if he had been convicted by full legal evidence; and shall proceed thereupon to pass sentence according to such second *Futwá*; (commuting the punishment, if any regulation requires it;) or, if the case be referrible for the sentence of the nizamat adawlut, shall transmit the trial, with his opinion, to that court." *Fourth.* "The judge, before whom the trial may be held, shall proceed in like manner as directed in the preceding clause, when the crime of which the prisoner is convicted (whether upon full legal evidence, or upon strong presumptive proof) may not have been specifically provided for by any regulation; but would subject the prisoner to the specific penalty of *Hudd* or *Kisás* provided by the Mohummudan law, if the sentence against him for such penalty were not barred by some special exception, or scrupulous distinction (*Shoobah*) not affecting the nature and criminality of the offence, and evidently repugnant to the principles of equal justice; in consequence of which bar to a judgment for the specific penalty the prisoner is declared liable to discretionary punishment. In such cases the law officer is to declare, by a second *Futwá*, to what punishment the prisoner would have been liable under the Mohummudan law, for the crime committed by

in all cases wherein a discretion is left by the Mohummudan law.

Rules enacted for this purpose by R. 33, 1803, § 2.

*Futwá* to be given by the law officers of the courts of circuit, in all cases of discretionary punishment.

Sentence to be passed in such cases if the crime have been provided for by any regulation.

Second *Futwá* to be required, and sentence passed thereupon, if the crime have not been provided for by any regulation, but be such as would have subjected the prisoner to the specific penalty of *Hudd*, or *Kisás*, if he had been convicted by full legal evidence.

Similar mode of proceeding to be observed when the crime may not have been provided for by any regulation; and a sentence of *Hudd*, or *Kisás*, is barred by some legal exception or distinction, not affecting the nature of the offence, and repugnant to justice.

Restriction, when the specific penalty is remitted or mitigated by the Mohummudan law, in consideration of circumstances which alter the nature and diminish the criminality of the offence. Further restriction against the infliction of any punishment, upon suspicion only, not amounting to a strong presumption of guilt.

But security may be required in cases of strong suspicion; as well as upon proof of notorious bad character. Courts of circuit how to proceed in cases of conviction and discretionary punishment, not specifically provided for by any regulation, or by the Mohummudan law.

The foregoing provisions extended to the court of nizamut adawlut, with modification of the clause last specified.  
R. 53, 1803, §7.  
Court of nizamut adawlut how to proceed in cases

him, if the special exception or distinction, by which *Hudd* or *Kisās* is barred in the particular case, had not existed; and the judge is to proceed thereupon as directed in the preceding clause." *Fifth*. "Nothing in this section, however, shall be construed as authorizing a sentence of discretionary punishment exceeding, or equal to, the specific punishment prescribed by the Mohummudan law, in cases where such specific penalty is remitted or mitigated by the provisions of the Mohummudan law, in consideration of circumstances which alter the nature, and diminish the criminality, of the offence, unless such enhanced or equal punishment for the crime in question shall have been expressly denounced by some regulation, in modification of the Mohummudan law." *Sixth*. "Nor shall any part of the present regulation be considered to authorize the infliction of any punishment whatever upon suspicion only; (termed by the Mohummudan lawyers, *Wuhm*, *Shuk*, or *Shoobah Zaeefah*) when the evidence against the prisoner is undeserving of credit; or the presumption of his guilt, arising from credible testimony, or circumstantial evidence, is weak; and does not amount to the degree of strong and violent presumption, held sufficient for conviction; and recognized as such in the Mohummudan law, under the denominations of *Ghālib-oo-zun*, *Akbur-oo-raec*, *Shoobuh-u-curvee*, or *shoodeed*. When the judge, before whom a prisoner may be tried, shall not consider him convicted on such presumptive proof; or on the evidence of credible witnesses; or on his own confession; he shall not sentence the prisoner to suffer any punishment; whatever may be the *Futwā* of the law officer. But in cases of strong suspicion, though not amounting to conviction, as well as upon proof of notorious bad character, the judge of circuit may direct the zillah or city magistrate to detain the prisoner in custody until he shall give sufficient security for his future good behaviour, and appearance when required." *Seventh*. "If the crime, of which a prisoner is convicted, and for which he is declared liable to discretionary punishment, shall neither have been specifically provided for by any regulation; nor by any stated penalty in the Mohummudan law; and the judge, before whom the trial may be held, shall consider the crime to have been established against the prisoner, and deserving of punishment; he shall, after consulting with the law officer, respecting the measure of punishment which under the discretion left by the law, and the whole of the circumstances of the case, should be inflicted upon the prisoner, adjudge the prisoner to suffer such punishment as may appear adequate to his guilt, and the nature of the offence of which he is convicted; not exceeding corporal punishment of thirty-nine stripes; and imprisonment, with hard labor, for the term of seven years. If, in any instance, this degree of punishment appear to the judge of circuit insufficient, in a case not specifically provided for by the Mohummudan law; or the regulations; he shall transmit the trial, with his sentiments thereupon, to the court of nizamut adawlut."

The several provisions made by the above clauses for the guidance of the courts of circuit, and their law officers, in cases of discretionary punishment, were, by the three First Clauses of Section 7, Regulation 53, 1803, extended to the court of nizamut adawlut, and the law officers of that court, with the following modification of the last clause specified. "In trials referred to the nizamut adawlut, under Clause Seventh, Section 2, of this regulation,

<sup>1</sup> The latter part of this clause is modified by Section 2, of Regulation 8, 1818, (hereafter cited more fully) which rescinds such part of the clause referred to, "as vests the courts of circuit with authority to require security for good behaviour, from persons charged with, but not convicted of, a specific offence on the ground of a strong suspicion of their having committed such offence, independently of any proof of notorious bad character."

viz. when the crime of which the prisoner is convicted, and for which he is declared liable to discretionary punishment, shall not have been specifically provided for, either by the regulations, or by any stated penalty in the Mohummudan law, the judges of the nizamat adawlut, provided the offence be punishable at discretion under the Mohummudan law, and they shall be satisfied of the conviction of the prisoner, are authorized to pass such sentence upon the prisoner, not extending to capital punishment, as they may deem adequate to the crime of which he is convicted, and consonant to the general principles of justice, on due consideration of all the circumstances of the case. The court shall at the same time propose to the Governor General in Council a regulation, to fix and declare the specific punishment of any crime of magnitude, which may be found not to have been specifically provided for, either by the Mohummudan law, or by the regulations; and which may appear to call for an express denunciation of the penalty to be incurred by committing the same."

of discretionary punishment, not specifically provided for by the regulations, or by any stated penalty in the Mohummudan law.

The following additional enactments in Sections, 2, 3, and 4, of Regulation 17, 1817, entitled "A Regulation to provide for the more effectual administration of criminal justice in certain cases;" and meant especially (as stated in the preamble) to "enable the judges of the nizamat adawlut to pass a sentence of punishment, when the *Futwá* of the law officers may not convict the prisoner of the fact, or facts charged against him; nor declare him liable, on strong presumption, to discretionary punishment," may likewise be specified in this place, together with Section 5, of the same Regulation, which provides for cases in which evidence before the courts of circuit may be declared inadmissible by the law officers of those courts, on insufficient grounds.

Additional enactments in R. 17, 1817.

§ 2. "Whenever a person charged with a criminal offence, and brought to trial before a court of circuit, shall be acquitted of the charge, by the *Futwá* of the Mohummudan law officer present at the trial, and the judge before whom the trial may be held, on full consideration of the evidence, and of all the circumstances of the case, shall be of opinion that the proof against the prisoner, whether founded on his free and voluntary confession, or on the testimony of credible witnesses, or on circumstances of strong presumption, is sufficient to convict the prisoner of the whole, or any part of the charge, so as to render him a proper object of punishment, the judge shall not pass any sentence; but, as directed by the existing regulations in all cases wherein a judge of circuit sitting on a criminal trial may disapprove the *Futwá* of the law officer, shall transmit, without delay, the whole of the proceedings on the commitment and trial, with the *Futwá* of the law officer, to the court of nizamat adawlut; and shall state, in a letter to that court, the specific crime or crimes, which the judge may consider to be established against the prisoner."

Section 2. Judge of circuit how to proceed, when a person brought to trial before him may be acquitted by the *Futwá* of the law officer, and the judge of circuit shall be of opinion that the proof against the prisoner is sufficient to convict him of the whole or part, of the charge, so as to render him a proper object of punishment.

§ 3. "On receipt of the proceedings upon trials referred to the nizamat adawlut, in pursuance of the foregoing section, the Mohummudan law officers of that court shall write their *Futwá* thereupon, as in other trials referred under the general regulations."

Section 3. law officers of the nizamat adawlut to write their *Futwá* upon trials referred under the foregoing section.

§ 4. "In such cases, as well as in all trials referred to the nizamat adawlut, when the *Futwá* of one or more of the law officers of that court may acquit a prisoner of the whole, or any part of the charge preferred against him, and two or more judges of that court, on a deliberate consideration of the evidence and circumstances of the case, shall concur in opinion, that the proof against the prisoner so acquitted, whether founded on his free and voluntary confession, or on the testimony of credible witnesses, or on circumstances of strong presumption, is sufficient to convict him of the whole, or any part of the charge, and that he is in every respect a proper object of

Section 4. Power vested in two or more judges of the nizamat adawlut to pass sentence of conviction and punishment, in certain cases, notwithstanding



standing a *Futwá* of acquittal by the law officers of that court

punishment, the judges so concurring in opinion, are hereby declared competent to convict and pass sentence of punishment upon the prisoner, according to the nature and degree of his offence, and the provisions applicable thereto in the laws and regulations in force; in like manner as if he had been declared convicted by the *Futwá* of the law officers."

Section 5. Courts of circuit how to proceed when the evidence of witnesses may on insufficient grounds be considered by the law officers to be inadmissible.

§ 5. "If the evidence of a witness on a criminal trial, before a court of circuit, be declared by the Mohummudan law officer inadmissible, on the ground of the witness being a police officer, or an officer of Government of any description; or on any other ground of exception in the Mohummudan rules of evidence, which may appear to the judge of circuit unreasonable and insufficient; the judge shall cause the examination of the witness to be taken, notwithstanding the exception stated by the law officer; and shall require the latter, on completion of the trial, to declare in his *Futwá* the sentence to which the prisoner would have been liable, if the evidence of the witness or witnesses, objected to, had been admissible under the provisions of the Mohummudan law. In such cases, however, if the conviction of the prisoner depend exclusively or principally upon the evidence of the witness or witnesses objected to by the law officer, the judge of circuit shall not pass any sentence; but shall refer the trial to the *nizamut adawlut*; which court, after taking a *Futwá* from its law officer, is empowered to pass such sentence as may be deemed just and proper, under the preceding section of this regulation, and the general regulations in force."

Previous declaration in R 9, 1793, § 56, extended to Benares by R 16, 1795, § 22; and re-enacted for ceded provinces in R 7, 1803, § 25. Religious persuasion of witnesses not to invalidate their testimony.

On the subject of the last-mentioned section, it had been previously declared, in Section 56, Regulation 9, 1793, (extended to Benares by Section 22, Regulation 16, 1795, and re-enacted for the ceded provinces in Section 25, Regulation 7, 1803) that "the religious persuasion of witnesses shall not be considered a bar to the conviction or condemnation of a prisoner; but in cases in which the evidence given on a trial would be deemed incompetent by the Mohummudan law, solely on the ground of the persons giving such evidence not professing the Mohummudan religion, the law officers of the court of circuit shall be required to declare, what would have been their *Futwá*, supposing such witnesses had been Mohummudans. The court of circuit shall not pass sentence in such cases; but shall transmit the record of the trial, with the *Futwá* directed to be required from the law officers, to the *nizamut adawlut*; which court, provided that it shall approve of the proceedings held on the trial, shall pass such sentence as would have been passed, had the witnesses, whose testimony may be so deemed incompetent, been of the Mohummudan persuasion."

Court of circuit, how to proceed when the witnesses are deemed incompetent, because they are not Mohummudans. Further provision in R 9, 1793, § 51, extended to Benares by R 16, 1795, § 22, and re-enacted for ceded provinces in R 7, 1803, § 20, 21. No criminal to suffer mutilation.

It was further provided in Section 51, Regulation 9, 1793, (extended to Benares by Section 22, Regulation 16, 1795; and re-enacted for the ceded provinces in Sections 20 and 21, Regulation 7, 1803,) that "no criminal shall suffer the punishment of mutilation. If a prisoner shall be adjudged, in conformity to the *Futwá* of the law officers, to lose two limbs; instead of being made to undergo such punishment, he shall be imprisoned, and kept to hard labor, for fourteen years: and if a prisoner shall be adjudged to lose one limb, he shall, in lieu of such punishment, be imprisoned and kept to hard labor for seven years. The judges are accordingly directed, whenever any criminal shall be sentenced to suffer mutilation, to commute such punishment, for imprisonment, and hard labor for the term above prescribed; and to issue their warrant to the magistrate for that purpose."

What punishment to be inflicted in lieu of mutilation. Recapitulation of provisions of the Mohummudan law concerning robbery, and necessity of making fur-

It has already been observed, that the provisions of the Mohummudan law for the punishment of highway robbery cannot, according to the prevailing doctrines, be applied to robberies committed in any other place than on or near the highway, at a distance from any inhabited place; and that, even with respect to these, the specific penalty is barred, if any one of the band

of robbers be under age ; or lunatic ; or dumb ; or a relation, within the prohibited degrees, of the person robbed or murdered ; or if such person be not a Mosulman, or under the permanent protection of a Mohummudan government ; or if any of the robbers have a joint interest in the property plundered ; or such property be not in legal custody with respect to any one of the robbers ; or its value be less than ten *dirms* (between two and three rupees) for the share of each robber. These distinctions being evidently repugnant to the principles of public justice ; and the atrocious crime of gang-robbery, with frequent murder, maiming, burning, or other aggravating circumstances, continuing to prevail in many districts (especially within the province of Bengal, where the pusillanimous disposition of the inhabitants prevents, in general, their making any opposition to a numerous and armed banditti ; ) it became highly requisite that provision should be made for the more certain and adequate punishment of robbery, with or without murder, or other aggravating acts of criminality. The following rules were accordingly enacted by Sections 3, 4, and 5, of Regulation 53, 1803, for the court of circuit ; and by the fourth clause of Section 7, of the same regulation, were extended to the *nizamut adawlut* ; the judges of which court were thereby “ authorized to adjudge the stated punishment, whatever may be the *Futwa* of their law officers ; provided that it shall declare the prisoner, or prisoners, to have been convicted of the crimes incurring the stated penalties ; either on free and voluntary confession, or on the testimony of credible witnesses ; or on strong circumstantial evidence (sufficient to establish *Ghalibzum*, or violent presumption of guilt) ; and provided the judges of the *nizamut adawlut* shall see no cause to disapprove such conviction of the prisoner or prisoners ; or to mitigate or remit the specified punishment.”

§ 3. “ *First*. Any person or persons, who shall, in the day or in the night, go forth with any offensive weapon ; or in a gang with or without an offensive weapon, with the criminal intent of committing robbery, and shall, by force or intimidation, rob or attempt to rob, any person or persons, on or near a highway ; or on a river, lake, or other water ; or in or near a city, town, or village ; or in any other place whatever ; or shall attack by open violence, and rob, or attempt to rob, any dwelling-house, or other house or building ; or any tent, boat, or other receptacle of persons or property, in which there may be any person or property at the time of such robbery, or of such attempt to rob ; shall be deemed guilty of the crime of robbery by open violence ; (denominated in the Mohummudan law *Suruca-i-kobra*, and more commonly *Shubkhoonee*, or *Dukytee*,) and on due conviction thereof, whether by free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence, shall be adjudged to suffer such of the penalties declared in the next section, as may be applicable to the case, viz. according as the robbery may be with, or without, homicide, wounding, maiming, or other personal injuries ; or with or without other circumstances of aggravation. *Second*. In such cases of robbery by open violence, the punishment of the offenders shall not depend upon the amount, value, or description, of the property plundered. Nor shall any of the circumstances noticed in the preamble to this regulation, as barring a sentence of *Hudd* under the Mohummudan law, in cases of highway robbery, nor any other provision in that law, be hereafter allowed to operate against the punishment of persons convicted of highway robbery, or of any robbery by open violence, as defined in the preceding clause of this section ; or of murder, or other acts of criminality committed in the prosecution of such robbery ; or of an intent to rob : provided, as in all other cases of criminal conviction and punishment, that the party convicted be adult, and of sound understanding, so

ther provisions for the more certain and adequate punishment of robbery, with or without murder, or other acts of criminality.

Rules enacted for this purpose in R. 53, 1803 ; and powers vested in court of *nizamut adawlut* by Section 7, Cl. 4, of that regulation.

R. 53, 1803, § 3. What persons shall be deemed guilty of the crime of robbery by open violence ; and how punishable on conviction.

The punishment not to depend upon the amount or value of the property plundered ; not to be affected by any of the circumstances which bar a sentence of *Hudd* under the Mohummudan law ; or by any provision in that law ; if the party convicted be a proper object of punishment

Courts of en-  
cunt how to  
proceed, upon  
the *Futurás* of  
their law of-  
ficers, in such  
cases.

as to render him a proper object of punishment. *Third.* In all such cases, of conviction of robbery by open violence; or of murder, or other criminal acts, done in prosecution of such robbery, or of an intent to rob; if the law officer of the court of circuit declare the prisoner liable to discretionary punishment, the judge, before whom the trial may be held, is to proceed as directed in Clause Second, Section 2, of this regulation. If the law officer declare the prisoner liable to suffer death under the Mohummudan law, the judge is to refer the trial to the court of nizamat adawlut, with his opinion, as directed by the existing regulations; or, if the law officer declare the prisoner liable to amputation of limb under the Mohummudan law, the judge is either to refer the trial for the sentence of the nizamat adawlut; or to commute the punishment and pass sentence against the prisoner, in conformity to the ensuing section; according as the degree of punishment to be adjudged, or any provision in the regulations, may require a reference of the trial for the sentence of the nizamat adawlut, or otherwise."

Section 4.  
In cases of  
murder com-  
mitted in the  
prosecution of  
robbery, what  
persons liable  
to a sentence  
of death.

In cases of  
wounding, or  
other personal  
injury, not oc-  
casioning ho-  
micide, or of  
arson or other  
aggravating  
act of crimi-  
nality commit-  
ted in the pro-  
secution of  
robbery, what  
persons sub-  
ject to impris-  
onment and  
transportation  
for life.

Or, in special  
cases, to a sen-  
tence of death.

In cases of  
robbery, or an  
attempt to rob,  
without homic-  
ide, personal  
injury, or other  
act of aggra-  
vation, what  
persons liable  
to imprison-  
ment and hard  
labor for four-  
teen years.

Or, in special  
cases, to impris-  
onment and

§ 4. "*First.* All persons convicted of being the heads or leaders of a gang of robbers, by whom a murder may have been committed; or of having been actively concerned in the perpetration of such murder; or of any murder committed in the prosecution of robbery, or an intent to rob; or of having been present, aiding, and abetting, when such murder was committed; or, though not present, of having procured and caused, by hire, counsel, or command, the perpetration of such murder, in pursuance of a preconcerted plan to commit the same, or to commit robbery; shall be adjudged to suffer death. *Second.* All persons convicted of being the heads or leaders of a gang of robbers, by whom any person may have been wounded, maimed, burnt, or subjected to other personal injury, torture, or cruelty, not occasioning homicide; or by whom a dwelling-house or houses may have been set on fire; or any other criminal and aggravating act committed, in the prosecution of a robbery, or intent to rob; as well as persons convicted of having been actively concerned in any of the acts aforesaid, done in prosecution of a robbery, or intent to rob; or of having been present, aiding and abetting, when any such acts were committed; or, though not present, of having procured and caused, by hire, counsel, or command, the perpetration of any such acts in pursuance of a preconcerted plan to commit the same, or to commit robbery; shall be adjudged to suffer imprisonment and transportation for life. Moreover, any leaders of gangs, or other heinous offenders, convicted of a repetition of the crime described in this clause; or without such repetition, of a degree of cruelty, violence, or other aggravating criminality, which, under the discretion allowed by the Mohummudan law in cases of *Seeásut*, may be punishable with death; and which may appear to the court of nizamat adawlut to render such heinous offenders deserving of capital punishment; shall be liable to a sentence of death. *Third.* All persons convicted of being the heads or leaders of a gang of robbers by whom a robbery may have been committed without homicide; and without any personal injury, or other act of aggravation, as specified in the preceding clause; or by whom any violent attempt shall have been made to commit such robbery, though not effected; as well as persons convicted of having been actively concerned in any such robbery, or attempt to rob; or having been present, aiding and abetting at such robbery, or attempt to rob; or, though not present, of having procured and caused, by hire, counsel, or command, the perpetration of such robbery, or attempt to rob, in pursuance of a preconcerted plan for this purpose; shall be adjudged to suffer imprisonment and hard labor for the period of fourteen years. The court of nizamat adawlut are further empowered to extend their sentences, to impris-

sonment and transportation for life, upon any leaders of gangs, or other offenders, convicted of a repetition of the crime described in this clause ; or without such repetition, if from proof of the notorious bad character of the party convicted, or on consideration of any other circumstance appearing upon the trial to aggravate the guilt of any particular prisoner, and evince the danger of his future depredations, if set at liberty, it shall, in the judgment of that court, be just and necessary to inflict a more severe punishment than imprisonment and labor for the term of fourteen years.' *Fourth.* Persons convicted of going forth with a gang of robbers for the purpose of committing robbery, but apprehended before they have committed such, or have made any violent attempt for the purpose, so as to bring them within the provision contained in the preceding clause, shall be adjudged to suffer imprisonment and hard labor for such period, not exceeding seven years, as the circumstances of the case may appear to merit. *Fifth.* Provided with respect to all the crimes, and degrees of punishment, specified in the several clauses of this section ; if, from any extenuating circumstances, which may appear on the trial before the courts of circuit, or court of nizamat adawlut, the stated punishment shall, in any particular instance, appear too severe ; or if on consideration of the number of prisoners convicted of the same crime, and of any discriminative circumstances with respect to one or more of them, the example shall appear sufficient for the ends of justice, without extending the full degree of the prescribed punishment to the whole of the prisoners convicted ; it shall be competent to the court of nizamat adawlut, or to the courts of circuit, if the trial be not referrible under the regulations to the nizamat adawlut, to mitigate the sentence, in such cases, as may be deemed just and expedient. *Sixth.* The courts of circuit are also to report to the nizamat adawlut, and that court, if it appear necessary, will report to the Governor General in Council, the case of any prisoner or prisoners, who may appear proper objects of mercy and pardon ; or if the punishment to which they are sentenced shall not have been adjudged under any provision of the Mohummudan law, or the regulations, expressly requiring the same, the court of nizamat adawlut, as already authorized, may remit the punishment, and order the discharge of the prisoner, without reporting the case for the orders of the Governor General in Council."

transportation for life.

Persons going forth to rob, but apprehended before they have committed robbery, or made any violent attempt, how punishable on conviction.

Provision for mitigation of the punishment stated in the foregoing clauses, under any extenuating circumstances, or if the example appear sufficient without extending the full punishment to the whole of the prisoners convicted.

Further provision for the cases of any prisoners who may appear proper objects of mercy and pardon.

Section 5. What sentences to be

§ 5. "*First.* No part of the preceding section shall be considered applicable to secret theft ; or larceny without open violence (*Suruca-i-sogra*) ;

<sup>1</sup> This clause was rescinded by Section 2, of Regulation 8, 1808 ; with a view to bring all cases of conviction of the atrocious crime of robbery by open violence before the court of nizamat adawlut ; and the following rule was substituted in Section 3, of that Regulation. " All persons convicted of being concerned, as principals or accomplices, subsequently to the promulgation of this regulation, in the crime of robbery by open violence, as defined in Section 3, Regulation 53, 1803, and who may not, under the regulations in force, be liable to a sentence of death, shall be adjudged by the courts of circuit, and by the court of nizamat adawlut, to receive thirty-nine lashes with a corah, and to be imprisoned and transported for life ; unless, from any extenuating circumstances appearing on the trial, the stated punishment shall appear too severe ; in which case the court of nizamat adawlut is authorized to mitigate the sentence, as in other cases left to the discretion of that court, by Clause Fifth of Section 4, Regulation 53, 1803 ; or to act in pursuance of Clause Sixth of that section, if the prisoner appear a proper object of mercy and pardon." It was further declared by Section 9, Regulation 8, 1808, that " persons convicted of going forth with a gang of robbers, for the purpose of committing robbery, but apprehended before they have committed such robbery, or made any violent attempt for the purpose, and adjudged to suffer temporary imprisonment under Clause Fourth, of Section 4, Regulation 53, 1803, shall previously to their release from confinement be required to give substantial security for their future good conduct."

passed by the criminal courts in case of secret theft, or larceny, without open violence; whether accompanied with burglary, or simple theft from the person or house. But murder, wounding, or any other act of violence, done in prosecution of an original design to commit theft, declared liable to the same penalties, as if done in prosecution of robbery by open violence.

Reasons stated in preamble to R. 3, 1805, for adding corporal punishment by stripes, to the stated penalties for robbery, in cases short of death; and for subjecting any village watchmen or officers of police, convicted of being concerned in, or having connived at robbery, to more exemplary punishment, in proportion to their aggravated criminality. R. 3, 1805, § 2. In what cases of robbery the criminal courts may adjudge corporal punishment by stripes, and to what extent.

Section 3. Persons convicted of going forth to commit robbery, but apprehended before

whether accompanied with burglary, (*Nuccub-zumee*), or simple theft from the person or house, unaccompanied with any aggravating circumstance. In such cases the Mohammudan law, with the modifications of it in the existing regulations, and the rules contained in Section 2, of this regulation, when the prisoner may be declared liable to discretionary punishment, shall govern the sentences of the courts of circuit; as well as of the nizamat adawlut in any cases referred to that court. *Second.* But in the case of a burglarious entry, or any entry by night, into a dwelling-house, or other house; or into a tent, boat, or other receptacle of persons and property, for the purpose of committing theft therein; although such entry may have been made in the first instance without any open violence; if any person or persons shall, after having entered, be guilty of murdering, wounding, maiming, torturing, or otherwise doing personal injury to any person or persons, or of any other criminal act of violence, done in the prosecution of the original intention to commit theft; the parties convicted, as principals or accomplices, of such murder, wounding, maiming, or other acts of criminality and violence, done in the prosecution of theft, shall be liable to the same punishment as has been declared in the preceding section, for the same acts of criminality committed in prosecution of robbery by open violence: and the several provisions contained in that section, as well as in Section 3, of this regulation, are accordingly declared equally applicable to the cases herein specified."

Corporal punishment by stripes, which had formerly constituted part of the usual punishment for robbery, in cases short of death, not having been specified in the rules above quoted; and instances having occurred in which the village watchmen, who are bound to assist the police officers in protecting the inhabitants of the country, and their property, from robbery, were found to have been concerned in the perpetration of this crime; strong grounds of suspicion also having appeared that even some of the public officers upon the police establishments had connived at the commission of robbery, or at the escape of persons residing within their jurisdictions, who from information, or notoriety, were known to be robbers; the following rules were enacted by Regulation 3, 1805, for subjecting offenders, convicted of so highly criminal and dangerous a violation of duty, to more exemplary punishment, proportionate to their aggravated criminality, and its danger to the community; as well as for enabling the criminal courts to adjudge corporal punishment, in all cases of conviction of robbery, when it may appear proper to inflict such punishment.

§ 2. "In all cases of conviction of the crime of robbery by open violence, as defined in Clause First, of Section 3, Regulation 53, 1803; whether such conviction be founded upon the free and voluntary confession of the prisoner, or upon the testimony of credible witnesses, or upon strong circumstantial evidence; and the party so convicted may not be sentenced to suffer death; the court of circuit, before whom the offender may be convicted, and the court of nizamat adawlut, in trials referred to that court, shall be competent to adjudge corporal punishment, not exceeding thirty-nine lashes with a corah, in addition to the penalties of imprisonment and transportation for life, or of imprisonment and hard labor for the period of fourteen years, prescribed by Clauses Second and Third of Section 4, Regulation 53, 1803; whenever, on consideration of the nature of the case, it may appear proper to inflict such additional exemplary punishment."

§ 3. "Persons convicted of the crime provided for by Clause Fourth, of Section 4, Regulation 53, 1803, viz. of going forth with a gang of robbers for the purpose of committing robbery, but apprehended before they have committed such, or have made any violent attempt for the purpose; and declared by the clause abovementioned, liable to imprisonment and hard labor

for such period, not exceeding seven years, as the circumstances of the case may appear to merit; are further hereby declared liable to corporal punishment, not exceeding thirty lashes with a corah, in addition to, or in commutation of, the whole or part of the imprisonment provided for by the clauses above cited; whenever it may be expedient, for the sake of example, or to prevent a lengthened imprisonment of the prisoner, to the court of circuit before whom he may be convicted, or to the nizamat adawlut in any cases referred to that court."

§ 4. "If any pyke, chiokeedar, pasban, dosaad, nigabaan, or other village watchman, or guard, of whatever denomination, entertained or employed by a landholder, or by any other person, for the protection of villages, houses, persons, or property, and consequently required by the regulations to assist the police officers in preventing robbery and other crimes, and in apprehending offenders; or if any police officer of whatever description, (whether a police darogah, or tehseeldar entrusted with the charge of the police, a city or town cutwal, or a jemadar, mohrir, burkundoss, piadah, or other person employed under the zillah or city magistrates, the police darogahs and tehseeldars, or under any other officers of the police, for the protection of the inhabitants of the country and their property from robbery; or for apprehending robbers and other criminals; or generally for the performance of any duty of police connected with the prevention of public offences;) shall be convicted of the crime of robbery by open violence, as defined in Clause First, of Section 3, Regulation 53, 1803; whether such conviction be founded upon the free and voluntary confession of the prisoner, or upon the testimony of credible witnesses, or upon strong circumstantial evidence; and the party so convicted shall not be liable to suffer death, under Clause First, of Section 4, Regulation 53, 1803, as an accomplice in murder, as well as robbery; it is hereby declared, that he shall be held and expressly deemed to be within the provisions contained in Clauses Second and Third of that regulation, whereby the nizamat adawlut are authorized to pass sentence of death, in cases of aggravated criminality, which may appear to deserve it, although the robbery may not have been attended with actual homicide; or where the robbery may have been without any personal injury or other act of aggravation, to extend the sentence of that court, from imprisonment and hard labor for fourteen years, to imprisonment and transportation for life; if on consideration of any circumstance appearing upon the trial, to aggravate the guilt of any particular prisoner, the infliction of such more severe punishment shall appear just and necessary. Under this declaration any watchman, guard, or police officer, as described in the present section, who may be convicted of having been present, aiding and abetting, at a robbery by open violence, or at an attempt to commit such robbery; or though not present, of having procured and caused by hire, counsel, or command, the perpetration of such robbery, or attempt to rob; will be liable to suffer death, on the sentence of the court of nizamat adawlut, according to the regulations, if in the prosecution of such robbery, or attempt to rob, any person shall be murdered, wounded, maimed, burnt, or subjected to other personal injury, torture, or cruelty; or any dwelling-house shall be set on fire; or other criminal and aggravating act committed; or will be liable to a sentence of corporal punishment, and imprisonment and transportation for life, by the court of nizamat adawlut, if the prosecution of such robbery, or attempt to rob, shall not have been attended with homicide, personal injury, or any of the other aggravating acts above specified. It is hereby further declared, that any clear and direct connivance on the part of a watchman, guard, or police officer, as described in this section, whereby a gang of robbers may have been enabled to commit any of the crimes above stated, shall, if duly

the commission of it, also declared liable to stripes, and to what extent.

Section 4. Village watchmen, or guards, of whatever denomination, and all police officers, of whatever description, convicted of robbery by open violence, and not liable to suffer death under the first clause of § 4, R. 53, 1803, declared liable to the special punishment for aggravated criminality, provided for by the second and third clauses of that section.

Connivance of a watchman, guard, or police officer, whereby a gang of robbers may be en-

abled to commit robbery or other act of criminality; how punishable on conviction.

Section 5. A village watchman, or guard, or any police officer, convicted of going forth to commit robbery, or conniving at a gang of robbers going forth, to what punishment liable, if the robbery be not committed, nor any violent attempt made for the purpose.

Section 6. Any police officer, guard, or watchman, convicted of theft, or of larceny and burglary, without any act of open violence, or of connivance at the perpetration of such crime, to what punishment liable.

Amended provisions for cases of murder, wounding, or other personal injuries, in prosecution of theft or burglary, contained in R. 17, 1817, § 8.

Second clause of § 5, R. 53, 1803, rescinded.

Persons convicted of murder, in prosecution of robbery, burglary, or theft, to what sentence liable.

Persons convicted of robbery by open violence, with or without wounding, or corporal injury, not occasioning homicide, to what sentence liable.

established, subject the offender to the same penalty, as he would have been liable to, if actually present, aiding and abetting; or, though not present, if he had procured and caused the perpetration of the offence, by hire, counsel, or command."

§ 5. "If any watchman, guard, or police officer, as described in the preceding section, shall be convicted of going forth with a gang of robbers for the purpose of committing robbery, or of conniving at the going forth of a gang of robbers for such purpose; but he, or they, may be apprehended before they have committed robbery, or made any violent attempt for the purpose; the watchman, guard, or police officer, so convicted, shall be liable to corporal punishment, and imprisonment, with hard labor, for such period, not exceeding fourteen years, as the circumstances of the case may, in the judgment of the court of circuit, before whom he is convicted, appear to merit; or if that court shall, in any particular case, deem the prisoner deserving of more exemplary punishment, they shall refer the trial to the court of nizamat adawlut; who are authorized, if sufficient ground appear, to extend the sentence to corporal punishment and imprisonment, with transportation for life."

§ 6. "The explanation contained in the two clauses of Section 5, Regulation 53, 1803, respecting the distinction to be observed in cases of secret theft, or larceny, without open violence, and of criminal acts of violence done in prosecution of the original intention to commit theft, shall be applied, in like manner, to the several provisions contained in the present regulation. But if any police officer, or any guard or watchman, bound to assist the officers of police, as described in Section 4 of this regulation, shall be convicted of theft, or of larceny and burglary, though without any act of open violence, or of clear and direct connivance at the perpetration of such crime, he shall be liable to suffer such aggravation of punishment as the court of circuit, before whom he may be convicted, or the nizamat adawlut, if the case be referrible to that court, shall deem adequate to his offence; not exceeding the limitations prescribed by Clause Seventh, of Section 2, and Clause Third, of Section 7, Regulation 53, 1803, for cases not specifically provided for by the regulations, or by any stated penalty in the Mohummudan law."

The following amended provisions for cases of murder, wounding, or other personal injuries committed in the prosecution of theft or burglary, have been enacted in Section 8, of Regulation 17, 1817; already adverted to, as bearing the title of "A Regulation to provide for the more effectual administration of criminal justice in certain cases."

"First. The second clause of Section 5, Regulation 53, 1803, which contains provisions relative to murder, wounding, and other personal injuries, committed in the prosecution of theft, or burglary, is hereby rescinded.

"Second. Persons convicted of murder, in prosecution of robbery, burglary, or theft, as in all other cases of wilful murder, are liable to a sentence of death, by the court of nizamat adawlut, under the laws and regulations in force, which are applicable to such cases. Third. Persons convicted of robbery, by open violence, as defined in the first clause of Section 3, Regulation 53, 1803, when accompanied with wounding, or other corporal injury, not occasioning homicide, and likewise when not so accompanied, under the provisions for such cases in Regulations 53, 1803, 3, 1805, and 8, 1808, are liable, by sentence of the nizamat adawlut, to receive thirty-nine lashes with a corah, and to be imprisoned, and transported for life; or, if the offender be a police officer, or a village watchman required to assist the police officers in preventing robbery, he is subject to the enhanced punishment declared in such instances of aggravated criminality, by Section 4, Regulation 3, 1805.

*Fourth.* In all cases of burglary and theft, or of theft without burglary, whether in a house or from the person of another, as well as in all cases of robbery, not within the provisions of the regulations in force for the punishment of robbery by open violence, if the robbery, burglary, or theft, or an attempt to commit the same, be accompanied with an attempt to commit wilful murder, whether by wounding, burning, strangling, poisoning, drowning, throwing into a well, or by any other means, or be accompanied with wounding, burning, or corporal injury to any person or persons, in such degree as to endanger life, the offender or offenders, who may be convicted, to the satisfaction of the nizamut adawlut, of having been concerned as principals or accomplices, in a robbery, burglary, or theft, or in an attempt to commit the same, attended with such aggravated criminality, shall be liable to the same punishment, as that prescribed for robbery by open violence; viz. thirty-nine lashes with a corah, and imprisonment, and transportation for life.—The trial in all such cases, shall be referred by the courts of circuit to the court of nizamut adawlut; and the judge of circuit, before whom the trial may be held, shall proceed, as directed in Section 4, Regulation 8, 1808, and other regulations in force, respecting prisoners who are liable to a sentence of imprisonment and transportation for life.—If the judge of circuit be of opinion, that there are grounds for a mitigation of the prescribed punishment, he shall state the same for the consideration of the nizamut adawlut. *Fifth.* In cases of conviction before the courts of circuit of any of the offences specified in the preceding clause, wherein the robbery, burglary, or theft, or an attempt to commit the same, may not have been accompanied with an attempt to commit murder; nor with wounding, burning, or other corporal injury, in such degree as to endanger life; but may have been attended with wounding, or other corporal injury, in a less degree, the judge of circuit, provided he concur in the conviction of the offender, shall, without reference to the nizamut adawlut, adjudge him to suffer such punishment, as may appear adequate to the offence, not exceeding the sentence which the courts of circuit are authorized to pass in cases of burglary, by the first clause of Section 3, Regulation 1, 1811; viz. thirty-nine stripes with a corah, and imprisonment for fourteen years, in banishment from the district where the prisoner may have resided. *Sixth.* Nothing in the above clause shall be construed to empower the courts of circuit to pass and order execution of a final sentence of conviction, and punishment, without reference to the nizamut adawlut, in any case of robbery by open violence, as defined in the first clause of Section 3, Regulation 53, 1803; or to authorize an enhancement of the penalties declared by the regulations in force, for burglary, or theft, when not accompanied with wounding, or other corporal injury; nor with an attempt to commit murder by strangling, or other means, as described in the fourth clause of this section. *Seventh.* It is however hereby declared, in explanation of the first clause of Section 5, Regulation 53, 1803, that the reference therein made to the Mohummudan law, in cases of theft, was not intended, and shall not be considered to preclude the courts of circuit from adjudging stripes, not exceeding thirty-nine, of the corah or rattan, in addition to imprisonment not exceeding seven years, when such punishment, in aggravated cases of theft, may appear just and proper.”

The offence of breaking into houses, tents, and boats, with an intent to rob, having become prevalent in several districts, especially in the provinces of Bengal, Behar, and Orissa; after the measures adopted for suppressing the more daring crime of robbery by open violence had operated to produce the salutary effect intended by them; the following rules were enacted by Regulation 1, 1811, to be in force from the period of their promulgation in

Persons convicted of burglary, and theft, or of theft without burglary, or of robbery not within the provisions for robbery by open violence, to what sentence liable; if the same be accompanied with an attempt to commit murder; or with wounding or other corporal injury endangering life.

Courts of circuit how to proceed on the conviction of persons tried before them in such cases.

Sentence to be passed by the court of circuit, when the offences specified in the preceding clause may not have been accompanied with an attempt to commit murder; or with wounding, or other corporal injury, endangering life.

Explanation of the preceding clause, as not extending to robbery by open violence. Not meant to authorize an enhancement of the existing penalties for burglary or theft, when not accompanied with any of the specified acts of aggravation. Explanation of the first clause of Section 5, R. 53, 1803, as not meant to preclude stripes, in aggravated cases of theft.

Rule enacted by R. 1, 1811, extended to Benares and the upper provinces, by R. 13, 1812, § 2, for punishment of burglary.



the provinces of Bengal, Behar, and Orissa; and were subsequently extended to Benares and the upper provinces by Section 2, Regulation 15, 1812.

Section 2.  
Certain provisions in existing Regulations modified.

Offence to which the present regulation is intended to apply.

§ 2. "*First*. The provisions contained in Section 5, Regulation 53, 1803, and in Section 6, Regulation 3, 1805, and in other existing regulations, for the punishment of persons, who may be convicted of the crime of burglary by *nuccub-zunnee*, or any other mode of house breaking, are hereby declared subject to the following modifications. *Second*. The offence, to which the provisions of the present regulation are intended to apply, is hereby defined to be, the breaking, either by day or by night, with intent to rob, into any dwelling house, whether constructed of stone, brick, mud, bamboo, grass, or other materials; or into a tent, boat, or other place of habitation; whether such entry be effected by cutting through or under the wall (*nuccub-zunnee*), or by any other means attended with breaking; and whether, in pursuance of the intent to commit such robbery, any property shall be carried away or otherwise."

Section 3.  
Sentence to be passed on persons convicted of the above offence committed between sun-set and sun-rise.

Or between sun-rise and sun-set.

Sentence to be passed on persons convicted of breaking into warehouses, &c.

§ 3. "*First*. Any person or persons who may hereafter be convicted before the courts of circuit of the commission of the offence above described, between sun-set and sun-rise, whether such conviction be founded on the free and voluntary confession of the offender, or on the direct testimony of credible witnesses to the fact, or on strong circumstantial evidence, shall be sentenced to imprisonment in banishment during the term of fourteen years, and to corporal punishment not exceeding thirty-nine stripes of the corah. *Second*. Any person or persons, who shall be convicted of the crime above defined, committed between sun-rise and sun-set, shall be sentenced to imprisonment in banishment for seven years, and to corporal punishment not exceeding twenty stripes of the corah. *Third*. Any person, who may hereafter be convicted of the offence of breaking into any warehouse, storehouse, or other building, or place used for the custody and preservation of property, either by day or by night, with the intent to rob, shall be sentenced to imprisonment for the term of seven years, and to corporal punishment not exceeding twenty stripes of the corah, whether, in pursuance of the intent to commit such robbery, any property shall have been actually carried away or otherwise. Provided however, that nothing contained in any part of this regulation shall be construed to supersede the provisions contained in Regulation 8, 1808, or in any other regulation, regarding the punishment of persons convicted of the crime of decoity or robbery by open violence. *Fourth*. Should any person, in the commission, or in the attempt to commit any of the species of the crime stated in the preceding clauses, kill another, the offender shall be adjudged to suffer death."

Or convicted of killing another in the attempt to commit any of the above crimes.

Section 4.  
Persons aiding or abetting, declared liable to the same punishment as principals.

§ 4. "All persons who may be convicted of having been present, aiding and abetting, in the commission of any of the offences above described, or although not present, of having procured or caused by hire, counsel, or command, the perpetration of such robbery or attempt to rob, or in any manner of confederating with the robbers in pursuance of a preconcerted plan for that purpose, shall be adjudged to suffer the same punishment, as the principals concerned in the crime are declared liable to, under the different clauses of the preceding section."

Section 5.  
In what cases the judge is not to pass sentence; but to transmit the trial with his opinion to the nizamat adawlut.

§ 5. "In trials, in which any of the prisoners are liable to a sentence of death, and likewise in trials referrible to the nizamat adawlut, in consequence of the disapproval by the judge of circuit of the *Futwā* of his law officer, the judge shall not pass sentence (except for the acquittal and discharge of prisoners not convicted) but shall transmit the trial with his opinion thereupon for the sentence of the nizamat adawlut."

§ 6. "Any person, or persons, upon whom the instrument denominated a *seend katee*, used for the known purpose of *nuccubzunnee*, may hereafter be found, shall be detained by the magistrate in safe custody, and employed to work on the public roads until he shall give security for his future good conduct, or until the court of circuit (before whom a list of persons so detained is required to be laid by the magistrate at each sessions of jail delivery) shall, on revision of the proceedings held by the magistrate, direct the discharge of the prisoner on a *mochulka*."

Section 6.  
Persons on whom a *seend-katee* may be found how to be dealt with.

Further enactments in R. 11. 1811, for the punishment of persons convicted of breaking into, or attempting to break into, houses, &c. with an intent to steal.

Section 2.  
Sections 2, 3, and 4, Regulation 1, 1811, modified.

Sentence to be passed on persons convicted of breaking into, or attempting to break into a place of habitation, by night or day, with an intent to steal, but without open violence. Or into a place used for custody of property.

Or being present, aiding and abetting in any of the said offences. Or having caused the perpetration by hire, counsel, or command.

Or having conspired with the perpetrators. Unless there appear to be circumstances of extenuation.

In which case the judge of circuit may mitigate the prescribed sentence under stated restrictions.

What mitigation allowed in convictions of breaking into, or attempting to break into a place of habitation, with intent to steal between sunset and sun

The following modifications of the rules above stated, were enacted in Regulation 11, 1814, for the reasons stated in the preamble to that regulation; viz. "The punishments, which the courts of circuit are directed to adjudge by Sections 3 and 4, of Regulation 1, 1811, on conviction of the crimes therein specified, are not more than adequate to the exemplary punishment of offenders so convicted, when there may be no special circumstances of extenuation, to warrant and call for a mitigation of the prescribed penalties. But no provision is made in the abovementioned regulation for a mitigated sentence by the courts of circuit; who have in consequence found it necessary to refer the trial to the nizamat adawlut, in every instance wherein the stated punishment has appeared too severe. The following rules have consequently been enacted, to be in force from the period of their promulgation throughout the territories immediately dependant on the presidency of Fort William."

§ 2. "First. The provisions contained in Sections 2, 3, and 4, of Regulation 1, 1811, for the punishment of persons convicted of the offences therein specified, are hereby declared subject to the following modifications. *Second*. When a prisoner may be convicted before a court of circuit of breaking into, or attempting to break into, a dwelling-house, tent, boat, or other place of habitation, by night or by day, with an intent to steal; but without open violence, such as to constitute the crime of robbery by open violence; or of breaking into, or attempting to break into, any warehouse, storehouse, or other building or place used for the custody and preservation of property, either by night or day with an intent to steal, but without open violence; or of being present, aiding and abetting in the commission of any of the offences above specified; or although not present, of having procured or caused the perpetration thereof by hire, counsel, or command; or having in any manner confederated with the perpetrators in pursuance of a preconcerted plan; the judge of circuit, provided he shall concur in the *Futwa* of the law officer, convicting the offender, whether such conviction be founded on a free and voluntary confession, or on the testimony of credible witnesses, or on strong circumstantial evidence, shall pass sentence upon the prisoner so convicted, according to the nature of the case, and the several degrees of punishment specified in Section 3, Regulation 1, 1811; unless from any circumstances of extenuation, such as the tender age of the prisoner, or his not having been armed, or the offence not having been committed by two or more persons, the judge of circuit shall be of opinion that the punishment stated in the abovementioned section would be too severe; in which case he is authorized to mitigate the sentences therein prescribed, under the following restrictions. *Third*. The sentence of imprisonment in banishment from the district, during fourteen years, and corporal punishment not exceeding thirty-nine stripes of the corah, prescribed in Clause First, of Section 3, Regulation 1, 1811, for the offence of breaking into a house, or other place of habitation, with an intent to steal, between sun-set and sunrise, and now extended to an attempt to commit the said offence, may be mitigated in cases of extenuation, to such period of imprisonment with or without stripes or banishment, as the judge of circuit may consider suffi-

And what, in convictions for the same offence between sun-rise and sun-set.

Or for breaking into or attempting to break into a place used for custody of property, with intent to steal by day or night.

Judges of circuit to record their reasons for exercise of discretionary powers vested in them.

And if further mitigation of punishment appear requisite, to refer the trial to the nizamut adawlut.

Further provisions respecting burglary and theft, as well as concerning receivers and purchasers of stolen property enacted in R. 12, 1818.

But mention of them postponed to the next section of this work; as connected with the office of magistrate.

Brahmins exempted from capital punishment in the province of Benares, by R. 16, 1795, § 23.

But this exemption rescinded, as being contrary to principles of equal justice, by R. 17, 1817, § 15.

cient, not being less than seven years. *Fourth.* The sentence of imprisonment in banishment for seven years, and corporal punishment not exceeding twenty stripes of the corah, prescribed by Clauses Second and Third, of Section 3, Regulation 1, 1811, for the offence of breaking into a house or other place of habitation, with an intent to steal, between sun-rise and sun-set, as well as for the offence of breaking into a warehouse, storehouse, or other building or place used for the custody and preservation of property, with an intent to steal, either by night or by day, and now extended to an attempt to commit either of the said offences, may be mitigated, in cases of extenuation, to such period of imprisonment, with or without stripes and banishment, as the judge of circuit may consider sufficient, not being less than three years. *Fifth.* The judges of circuit shall in all cases, wherein they may exercise the discretionary power vested in them by the preceding clauses, record their reasons for the mitigated sentence passed by them; and if in any instance a just consideration of all the circumstances of the case shall appear to them to call for a further mitigation or remission of punishment, they shall (provided they concur with their law officers in the conviction of the prisoner) pass sentence according to the preceding clauses, and refer the trial, with a full report of their sentiments, to the court of nizamut adawlut, for the final sentence or order of that court, in pursuance of Section 3, Regulation 14, 1810."

Some further provisions relative to the trial and punishment of persons charged with burglary, or theft; or with buying or receiving stolen property, knowing the same to have been stolen; are contained in Regulation 12, 1818; entitled, "A Regulation for extending the powers of the magistrates and joint magistrates in the trial of persons charged with breaking into houses, and other places of habitation, or into warehouses or other places used for the custody of property with an intent to steal; or charged with theft; or with buying or receiving stolen property, knowing the same to have been stolen." But these being more immediately connected with the powers and duties of the zillah and city magistrates, the mention of them is postponed to the next section. It will be sufficient to add here, that the enactments in this regulation for the punishment of receivers and purchasers of stolen property, are substituted for, and supersede the rules before enacted in Sections 7 and 8, of Regulation 1, 1811.

The city of Benares being considered the principal seat of the Hindoo religion, which holds sacred the life of a Brahmin, it was provided by Section 23, Regulation 16, 1795, (originating in an order of Government passed on the 8th October, 1790, but having operation in the province of Benares only,) that "no Brahmin shall be punished with death. In cases in which a Brahmin shall be declared by the law liable to suffer death, he shall in lieu of such punishment, be subject to be sentenced by the nizamut adawlut, to transportation. The court of circuit is not to pass sentence in any such trials, but is to forward them to the nizamut adawlut, for their final sentence." But this exemption of Brahmins, in the province of Benares, from the legal punishment for murder, to which Brahmins, as well as all other persons, are subject in every other part of the country, being obviously repugnant to the principles of equal justice; and having operated to prevent the infliction of adequate punishment in some atrocious cases of murder, which had come before the Benares court of circuit, and nizamut adawlut; Section 23, Regulation 16, 1795, and so much of Sections 7 and 9, Regulation 21, 1795, (hereafter cited,) or of any other regulation in force, as exempted a Brahmin, convicted of murder, within the province of Benares, from a sentence of death, were rescinded by Section 15, Regulation 17, 1817, from the date on which that regulation was promulgated. It was at the same time provided,

“that nothing in this section shall be understood to render any Brahmin, within the province of Benares, liable to a sentence of death for an offence committed before the promulgation of this regulation; nor shall the execution of a sentence of death against a Brahmin take place, at a future period, within the limits of any spot of ground, held sacred by the Hindoos. The magistrates are enjoined to execute all sentences of death against Brahmins at some convenient place situate without such limits.”

The reverence paid by the Hindoos to Brahmins, and the injury to cast and credit, which ensues from being the cause of their death, have, in some parts of the province of Benares, been converted into the means of setting the laws at defiance. On the approach of a public officer to serve any judicial or revenue process, or to exercise any coercion on the part of Government, over the Brahmins in question, they have been known to lacerate their bodies with knives or razors; or to swallow or threaten to swallow poison or a powder declared to be such; or to construct a circular enclosure called a *Koorh*, in which they raise a pile of wood or other combustibles, and place within the area an old woman, with a view to sacrifice her by setting fire to the *Koorh*; in which case it is believed that after death she will become the tormentor of those who occasion her being sacrificed. It has also been a practice with the Brahmins referred to, on their not obtaining speedy relief for any loss or disappointment, and upon any public process being issued against them, to cause their women and children to sit down in the view of the officer charged with such process; to brandish their swords; and threaten to behead or otherwise destroy their females or children on the nearer approach of the officer; and instances have occurred in which, from resentment at being subjected to arrest or other coercion, they have actually put such menaces into execution. A proclamation was issued throughout the province of Benares, on the 7th July, 1799, for the purpose of putting a stop to the murder of women and children in the manner above described; and provisions for the same purpose, as well as for preventing the construction of a *Koorh*, and the commission of any act of violence, or the threat of it, under the circumstances stated, are contained in Sections 2 to 10, of Regulation 21, 1795, as follows:—

§ 2 “Upon information in writing being preferred to the magistrate of the city, or a zillah court, against any Brahmin or Brahmins, for establishing a *Koorh*, or for being prepared to maim, wound, or slaughter his women or children, or any or either of them, in the manner described in the preamble to this regulation, or in any manner substantially similar thereto, on account of any subject of discontent, or any other account whatsoever; in such case, upon oath being made to the truth of the information, the magistrate is immediately to address to the said Brahmin, or Brahmins, a written notice in the Persian language and character, and in the Hindostanee language and Nageree character, and under his official seal, which notice is to be served on him or them, by such of the relations, friends, or connections, of the said Brahmin or Brahmins, as the magistrate may think fit, and have an opportunity of employing for the purpose; and in default of such relations, friends, or connections of the said Brahmin or Brahmins, the magistrate is to cause the notice to be served by a single peon of the same religion; and the notice shall require the said Brahmin or Brahmins to remove the *Koorh*, and the women and people, that may be placed in it; or to desist from any preparation towards wounding or slaughtering the women or children, according as either or both of these facts shall be charged in the information. The notice shall also contain a positive and encouraging assurance to the Brahmin or Brahmins in question, that on his or their complying with the principal exigence thereof, by removing the *Koorh*, and the person or persons therein,

Sentences of death against Brahmins not to be executed within limits of ground held sacred by the Hindoos.

The reverence paid by the Hindoos to Brahmins perverted, in some parts of the Benares province, to a defiance of the laws.

An enclosure called a *Koorh*, sometimes constructed for the sacrifice of an old woman.

Their females and children also at times destroyed, in resentment for personal arrest, or other coercion.

Proclamation issued in 1799, to put a stop to the murder of women and children, in the manner described;

And provisions for the same purpose, as well as for preventing the construction of a *Koorh*, and the commission of any act of violence, or the threat of it, under the circumstances stated, included in the Sections 2 to 10 of R. 21, 1795.

Section 2. Magistrate how to proceed, on receiving information of a Brahmin establishing a *Koorh*, or preparing to maim, wound, or slaughter, his women or children.

or by desisting from any preparation to wound or slaughter the women and children, and thereon repairing (as such Brahmin or Brahmins may think fit) in person, or by vakeel, to the city or zillah court, proper enquiry shall be made concerning the dispute that may have given occasion to the act or acts thus prohibited. But if the issuing of the notice shall not have the effect of inducing the said Brahmin or Brahmins to comply with the exigence thereof, a written return to that purpose is to be made and attested by the party or parties entrusted with the serving of it; and the magistrate is thereon to issue a warrant, under his official seal and signature, for the apprehension of the said Brahmin or Brahmins, specifying the misdemeanor and contumacy with which he or they stand charged; and the execution of the warrant is to be committed to peons of the Mohummudan religion; nor is any Hindoo to be sent on such duty. On the Brahmin or Brahmins, against whom the warrant shall have been issued, being brought before the magistrate, he or they are to be dealt with, in the mode prescribed in Section 5, Regulation 9, 1793, respecting persons charged with crimes or misdemeanors; and if it shall appear to the magistrate, on the previous enquiry, which by the said section he is himself directed to make, that the misdemeanor or misdemeanors charged, (that is the constructing of the *Koorh*, or being prepared to wound or slay the women or children, according as either or both of these acts shall have been charged,) were actually committed, and that there are grounds for suspecting the prisoner, or the prisoners respectively, to have been concerned, either as a principal or an accomplice, in the perpetration of either or both of these acts; the magistrate shall cause him or them to be committed to prison or held to bail, (according as the parties shall appear to have been principals or accomplices,) to take his or their trial at the next session of the court of circuit; and shall bind over the informant or complainant, and the witnesses, to appear at the trial, in the manner prescribed in the aforesaid section."

Section 3.  
Trial before  
the court of  
circuit, of per-  
sons charged  
with the of-  
fences speci-  
fied, how to be  
conducted;  
and what sen-  
tence to be  
passed on con-  
viction.

§ 3. "The court of circuit shall conduct the trial of the Brahmin or Brahmins charged with the above offences, in the manner prescribed in Regulations 9, 1793, and 16, 1795, in respect to other offences; but as the Mohummudan law cannot adequately apply to offences of this local nature, it is therefore hereby provided and ordered, that where, in the opinion of the court of circuit, the charge of being a principal in respect to the constructing of a *Koorh*, or to having been prepared to wound or slay the women or children, shall be proved, the said court shall sentence the prisoner to the payment of a fine equal to the amount of his annual income, which is to be estimated according to the best information that they may be able to procure respecting it; and on proof to the court's satisfaction of the prisoner's being guilty only as an accomplice, he shall be sentenced to the payment of a fine equal to one fourth of his estimated annual income. In all cases of parties being sentenced to the payment of such fines, they are to be committed to, and are to remain in jail, until the amount thereof be paid, or until they shall have delivered to the court of circuit, or, after the said court's departure, to the magistrate, full and ample malzaminny or security, to pay the same within six months from the date of their release; and such parties, before their enlargement, either in consequence of their having liquidated, or having entered into security for the payment of the fine imposed on them, shall deliver into the court of circuit, or, in their absence, to the magistrate, *Fael naminy* or satisfactory security, from one or more creditable persons, not to offend in like manner in future." § 4. "All sentences passed by the court of circuit under Section 3, without however any intermediate suspension of their execution, are to be transmitted, within ten days after their being passed, to the *nizamut adawlut*; which court may order such mitigation and restitution of the fine or fines thereby imposed, as may be thought proper; but until the

Section 4.  
Authority  
vested in the  
*nizam adaw-  
lut* to mitigate

order be issued by the nizamat adawlut, the sentence of the court of circuit is to be considered in full force, and to be carried into effect accordingly."

§ 5. "In case any Brahmin or Brahmins, against whom the city or a zillah magistrate may issue the warrant prescribed in Section 2, shall refuse to obey, or resist or cause to be resisted, the peons deputed to serve it, or escape after being taken by them into custody, or abscond, or shut himself or themselves up in any house or building, or retire to any place, so that the warrant cannot be served upon him or them, the magistrate shall issue a precept to the collector, requiring him to cause the nearest tehseeldar to attach the lands that such Brahmin or Brahmins may possess in property, or in mortgage, or in farm, or lakheraje. The lands shall remain attached until he or they surrender; and the collections made during the attachment, after deducting such revenue as may fall due to Government, shall be accounted for, and paid to, the party against, or on account of, or in resentment to, whom, the *Koorh* was originally established, or the woman or women, or child or children, were to be wounded or slain; and after the surrender or apprehension of the Brahmin or Brahmins who set up the *Koorh*, or was or were prepared to wound or slay his or their women or children, or either of them, his or their lands shall be released; but he or they shall be proceeded against, in respect to his or their trial for the original offence or offences, as prescribed in Sections 3 and 4." § 6. "In the event of any Brahmin, or Brahmins, establishing a *Koorh*, or preparing to wound or slay his or their women or children, or any or either of them, with a view to prevent the serving of any dustuck or writ on him or them, for arrears of revenue, by the local tehseeldar, or by the collector of Benares, in the manner in which, by Regulation 6, 1795, they are respectively authorized to issue such dustucks; if it be the dustuck of the tehseeldar that is thus opposed, he is not, after being informed thereof, to persist in enforcing it, but is to report the case immediately to the collector, accompanied by the written testimonies of the peon deputed to serve the dustuck; upon receipt of which information, or in case of his own original process being in like manner resisted, the collector is to represent, through the vakeel of Government, the amount of the balance due by such Brahmin or Brahmins, and the circumstances attending the issuing of his own or of his tehseeldar's process for realizing it, to the judge and magistrate of the city or zillah, in whose jurisdiction the lands, on account of which the arrears shall be due, may be situated; and upon the peon deputed with the tehseeldar's or the collector's dustuck, or any other creditable person or persons, attending in court, and making oath to the truth of the circumstance stated in the representation of the collector, either as to the constructing of a *Koorh* by such Brahmin or Brahmins, or as to his or their being prepared to wound or slay the women and children, or any of them, (according as one or both of these expedients shall be stated to have been resorted to by the Brahmin or Brahmins in question,) the magistrate is thereon to issue to such Brahmin, or Brahmins, a written notice, under his official seal, in the Persian language and character, and in the Hindostanee language and Nageree character, which is to be served on him or them by such of the relations, friends, or connections, of the said Brahmin or Brahmins, as the magistrate may think fit, and have an opportunity of employing for the purpose; and in default of such relations, friends, or connections, of the said Brahmin or Brahmins, the magistrate is to cause the notice to be served by a single peon of the same religion, and the tenor of it shall require the said Brahmin or Brahmins to remove the *Koorh*, and the women and people that may be placed in it, or to desist from any preparation for wounding or killing the women and children, (according as either or both of these offences may be charged in the information;) as likewise, either to discharge the balance of rent or revenue

Section 5.  
Penalty for a Brahmin's absconding, for whose apprehension the magistrate shall have issued a warrant under Section 2.

Section 6.  
Collector to apply to the magistrate in case of Brahmins establishing a *Koorh*, or being prepared to kill or wound women or children, on account of any process from the revenue department.

Notice, and

Process to be issued by the magistrate thereon.

that shall have been demanded from him or them ; or to appear, and entering security for such part of it as he or they may have pleas against the payment of, to file his or their objections to the payment of such part, in the city or zillah court, that the merits of the case may be enquired into and decided, according to the principles by which other disputed demands and accounts of revenue are, under Regulation 6, 1795, directed to be determined ; and the said notice is also to contain a positive and encouraging assurance to the Brahmin or Brahmins in question, that on his or their complying with the exigence of it, by removing the *Koorh* and the persons therein, or by desisting from any preparation to wound or slay the women and children, and either discharging the balance of revenue in demand, or repairing in person, or deputing a vakeel, to the city or zillah court, and entering security for the amount of it, proper enquiry shall be made into the pleas that he or they may have to state against the justice of the demand. If the issuing of the notice shall fail to induce the said Brahmin or Brahmins to comply with the requisitions of it, a written return to that effect is to be made and attested by the party or parties entrusted with the serving of it, and the magistrate is immediately to issue a warrant, under his official seal and signature, for the apprehension of such Brahmin or Brahmins, in which shall be specified the misdemeanor, contumacy, and arrear, with which he or they stand charged ; and the warrant shall be executed by peons of the Mohummudan religion, as directed in Section 2 ; and if the Brahmin or Brahmins shall refuse to obey, or resist, or cause to be resisted, the peons deputed to serve it, or escape, after being taken by them into custody, or abscond, or shut himself or themselves up in any house or building, or retire to any place, so that the warrant cannot be served on him or them ; the magistrate, on information to this effect, shall issue a precept to the collector, to cause the nearest tehseeldar to attach the lands that such Brahmin or Brahmins may possess in property, or in mortgage, or in farm, or lakheraje ; and the lands shall accordingly remain attached, and the profits of them be appropriated by Government, until the liquidation of the balance shall be effected, either from the produce, or in consequence of the said Brahmin or Brahmins making good the same from his or their other means ; and also, until the said Brahmin or Brahmins shall have been brought, or made his or their appearance, before the court, when he or they shall be tried for being concerned either as principals or accomplices in setting up the *Koorh*, or for having been prepared to wound or slay his or their women or children, or any or either of them, in the same manner, and with the same reservation as to the mitigation of the sentence, as is specified in Sections 2, 3, and 4.” § 7. “ If any Brahmin or Brahmins, on account of any discontent or alarm, well or ill founded, either against Government, or its officers, or servants, shall establish a *Koorh*, in which any person or persons shall, at any period from its construction until its removal, be burnt to death, or otherwise lose their lives, in consequence of such *Koorhs* being set fire to, by any person whomsoever ; the Brahmin or Brahmins, who shall have caused the construction thereof, shall be held chargeable with, and made amenable for, the crime of murder ; as well as the party or parties who may have been immediately employed, or aided in setting fire to the pile or combustibles in question ; and upon proof of the fact to the satisfaction of the court of circuit, such Brahmin or Brahmins, and such person or persons, setting fire to the *Koorh*, shall be sentenced, on trial before the said court, to suffer the punishment of death, in the same manner as if they had committed and been convicted of *Kutl-i-umd*, or premeditated murder, according to the doctrines of the Mohummudan law ; and with a view to render the example as public as possible, such sentence (whether consistent with the *Futwá* of the Mohummudan law officers, or otherwise,) is in this case, to be accordingly

Section 7  
Brahmins  
causing the  
construction  
of a *Koorh*, and  
persons bring  
it, to be tried  
on a charge of  
murder for the  
loss of the life  
or lives of any  
person or per-  
sons that may  
be thereby oc-  
casioned.

formally passed by the court of circuit on the Brahmin or Brahmins thus convicted ; but it is to be at the same time explained to the party or parties thus condemned, as it is also hereby expressly provided, that all such trials, and the sentences passed, are by the court of circuit to be submitted (in like manner as is prescribed in Section 47, Regulation 9, 1793,) to the nizamat adawlut ; and the party or parties condemned under this section, are to remain in jail to await the final judgment of that court.” § 8. “ If any Brahmin or Brahmins, under the circumstances, and in the manner, described in the preamble to, and the following sections of, this regulation, or under such circumstances, and in such manner, as shall be substantially similar thereto, with a sword, or other offensive weapon, or otherwise, shall actually wound his or their women or children, or other women or children, or any or either of them, on account or in resentment of any real or supposed injury committed towards him or them, by any aumils, tehseeldars, or other officers, or servants, employed in the revenue or judicial departments ; or shall so wound any of his or their own women or children, or any other woman or child, on account or in resentment of, his or their differences with any individual ; he or they shall, for such act or acts, be sentenced by the court of circuit to transportation, subject to the same reference to the nizamat adawlut, as in the cases referred to in Section 7.” § 9. “ If any Brahmin or Brahmins, under the circumstances, and in the manner, described in the preamble to and subsequent sections of this regulation, or under such circumstances, and in such manner, as shall be substantially similar thereto, with a sword or other offensive weapon, or otherwise, shall actually put to death his or their women or children, or other women or children, or any or either of them, on account or in resentment of any real or supposed injury, committed towards him or them, by aumils, tehseeldars, or any other officers, or servants, employed in the revenue or judicial departments ; or shall so put to death any of his or their own women or children, or any other woman or child, on account or in resentment of, his or their differences with any individual ; he or they shall be tried for such homicide, and on proof of the fact or facts, be accordingly sentenced by the court of circuit to capital punishment, subject to the same reference to the nizamat adawlut, and to the like commutation of the punishment or pardon, as in the cases referred to in Section 7 ;\* and the families of any Brahmin, or Brahmins, found guilty of murder under this section, shall, according to the order of the Governor General in Council under date the 17th of June, 1789, and the publication made in conformity to it by the resident at Benares, under date the 7th of July of the same year, be banished from the province of Benares, and the Company’s territories ; and his and their estates in land shall be forfeited, and disposed of as to Government shall seem proper ; and accordingly, the court of circuit is required to subjoin this order to all sentences that they may pass on Brahmins for murder under this section, at the same time reporting such sentence and order to the nizamat adawlut, together with as accurate an account as they may be able to procure, of the number, sex, and age, of the persons composing the family of such Brahmin or Brahmins, and annexing their opinion how far it may be advisable or otherwise, rigorously to enforce the banishment of the family of such Brahmin or Brahmins, or to confirm, or mitigate, or annul, the order for the forfeiture of their real property ; and the nizamat adawlut, on consideration

Section 5  
Punishment  
for Brahmins  
wounding wo-  
men and chil-  
dren

Section 9  
Punishment  
for Brahmins  
killing women  
or children

Families of  
such Brahmins  
to be banished  
and lands for-  
feited.

\* A further part of this section, which had reference to the transportation of Brahmins sentenced to suffer death, in pursuance of Section 23, Regulation 16, 1795, is omitted in consequence of that section having been rescinded, (together with the part of Section 7, R. 21, 1795, here referred to) by R. 17, 1817, § 15, before cited.

\* See preceding note ; and R. 17, 1817, § 15, before cited.



of this sentence and order, and of the opinion of the court of circuit, shall either wholly confirm, or recommend to the Governor General in Council such mitigation of, the said sentence and order, as shall appear to them proper; and in all cases where the forfeiture of the landed property of such Brahmin or Brahmins, and that of his or their family, shall be confirmed by the nizamat adawlut, the said court is to advise the Governor General in Council thereof; nor shall such sentence be carried into execution as far as regards the forfeiture of the landed property, without an order from the Governor General in Council, approving such part of the sentence, and directing in what manner the lands thus forfeited shall be disposed of."

Section 10.  
Limitation as to the forfeiture of the family lands of the offenders.

§ 10. "In the exercise of the discretion vested in the nizamat adawlut by Section 9, of recommending to the Governor General in Council the mitigation of sentences and orders passed by the court of circuit, under the said section, it shall be a rule, that whenever the Governor General in Council shall in consequence deem it proper to limit the banishment, either to the party or parties committing the murder; or to a certain number only of his or their family or families; no confiscation or forfeiture of the landed property shall in such instances take place; but the same shall be entirely left in the possession, and as the property, of those members of the family who shall be exempted from banishment."

Notice of another practice, by Brahmins and others, called *Dhurna*.

Another practice resorted to by Brahmins, as well as occasionally by other descriptions of persons, is called *Dhurna*. The object of it is to realize any claim of right, such as the recovery of a debt, without having recourse to judicial process; or to extort a donation; for which purpose the demandant, providing himself with poison, or with some offensive weapon, takes post at the door of the person upon whom he proposes to enforce his demand; and threatens to remain fasting until his requisition be complied with; or to destroy himself if any molestation be offered. In this case it is understood to be incumbent upon the party, who is the cause of the Brahmin's fasting, to abstain also from nourishment, until the latter be satisfied; and even ingress and egress, to and from his house, is in a great degree prevented. To put a stop to this practice, so open to abuse, and to become the means of undue exaction, a proclamation was issued in the province of Benares on the 22d December, 1792; and the following rule of proceeding was established by Sections 11, and 12, Regulation 21, 1795:—

Proclamation issued to put a stop to this practice in 1792.  
And rule of proceeding established by R. 21. 1795, s 11, 12.

Section 11.  
Magistrate how to proceed on a charge of sitting *Dhurna*.

§ 11. "On a complaint in writing being presented to the magistrate against any Brahmin or Brahmins for sitting *dhurna*, the magistrate, upon oath being made to the truth of the information, shall issue a warrant under his seal and signature for the apprehension of the person or persons thus complained against. On the prisoner or prisoners being brought before the magistrate, he shall enquire into the circumstances of the charge, and examine the prisoner or prisoners, and complainant, and also such other persons, (whose depositions are to be taken on oath,) as are stated to have any knowledge of the misdemeanor alleged against him or them, and commit their respective depositions to writing; and after this enquiry, if it shall appear to the magistrate that the misdemeanor charged against the prisoner or prisoners was never committed, or that there is no ground to suspect him or them to have been concerned in the committing of it, the magistrate shall cause

<sup>1</sup> Though not immediately connected with the regulation here cited for the province of Benares, it may be noticed in this place, that on the 9th April, 1806, the court of nizamat adawlut ordered a proclamation in the ceded and conquered provinces (which was repeated in September, 1809) declaring "that any person who shall be capitally convicted of putting to death his or her child, or children, in consequence of a real, or supposed insult, or injury, will be invariably punished with death, according to the laws and regulations in the case."

such Brahmin or Brahmins to be forthwith discharged ; recording his reasons for the information of the court of circuit, in the manner specified in Section 17, Regulation 9, 1793. On the contrary, if it shall appear to the magistrate that the crime or misdemeanor was actually committed, and that there are grounds for suspecting the prisoner or prisoners to have been concerned therein as principals or accomplices, the magistrate shall cause him or them to be committed to prison or held to bail, (according as in his discretion he shall judge proper,) to take his or their trial at the next session of the court of circuit ; and shall bind over the complainant to appear and carry on the prosecution, and the witnesses to attend and give their evidence, in the manner required by Section 5, Regulation 9, 1793. The trial shall take place before the court of circuit, in the manner prescribed in the said regulation, and in Regulation 16, 1795 ; and after the evidence is closed, it shall be referred to the pundit or pundits of the court, to deliver in writing the *bewusta*, or exposition of the law of the *Shaster*, as to whether the facts contained in the evidence amount to proof of the prisoner or prisoners having committed *dhurna* ; and in the event of such *bewusta* being in the affirmative, the court of circuit is to sentence the prisoner or prisoners to be expelled from the province of Benares, and to forfeit all title to the right or claim for the realizing of which the misdemeanor shall have been committed ; but this sentence is not to be carried into execution until it shall have been reported by the court of circuit to the nizamat adawlut, and it shall have been either wholly confirmed, or directed to be enforced, under such mitigation, as to the expulsion from the province, or to the forfeiture of the right or claim of the prisoner or prisoners to the property for which he or they sat *dhurna*, as to the said court shall seem proper." § 12. "In the event of the *bewusta* which the pundit is required to deliver in Section 11, not stating the circumstances sworn to in the evidence to amount to the offence of *dhurna*, and the court of circuit shall nevertheless be of opinion, from the evidence before them, that the prisoner did in fact commit *dhurna*, according to the common construction and received meaning of that term, although the act may not have been attended with all the circumstances that may be legally required to constitute *dhurna*, according to the description of it in the books of the Hindoos ; the said court is, under such circumstances, to take from the prisoner, or prisoners, a *mochulka* or engagement conditioning, that if such prisoner or prisoners shall again sit *dhurna* on any one, or perform any act of a nature so similar to *dhurna*, as shall, on their being prosecuted before the court of circuit, be deemed by the judges of the said court present at the trial, or the majority of them, equivalent or tantamount to *dhurna*, the said prisoner or prisoners shall respectively for such second offence suffer the full penalty of *dhurna*, by being expelled from the province, and by being made to forfeit all right and title to the claim in question."

The rules above cited having inadvertently specified Brahmins only, it was explained in Section 6, Regulation 8, 1799, that they "were meant to include all other descriptions of persons subject to the jurisdiction of the zillah and city courts, as well as Brahmins. It was further explained and enacted by the same section, "that the pundits, in delivering the *Bewusta* required from them, are not to consider themselves restricted to the exact definition of *dhurna* in the *Shaster* ; but are to regard the common construction of that term and practice, and the circumstances generally understood to denote it, whether described in the *Shaster* under the technical denominations of *dherm*, *bebbhar*, *chullona*, *achrit*, or any other mode of duress practised by individuals without authority from the magistrate, for the recovery or extortion of money." The rules enacted for the prevention of *dhurna*, in the province of Benares, were re-enacted for Bengal, Behar, and Orissa, by Regulation

Process of trial before the court of circuit. *Bewusta* of pundits to be taken.

Sentence to be passed.

Section 12. Court of circuit how to proceed in case all the legal requisites to constitute *dhurna* shall not be found, although the offence was substantially committed.

Rules cited declared applicable to other persons as well as Brahmins, by R. 8, 1799, s. 6. Further explanation, in same section, of *Bewusta* to be given by the pundits. The rules for prevention of *Dhurna*, in Benares, re-enacted with modifications, for Bengal, Behar, and

Orissa, by R. 5, 1797; and for the ceded provinces, by R. 3, 1804, § 9, 10. The evidence on such trials to be referred to the pundit of the provincial court of appeal, and should he declare the charge to be proved, the prisoner to be sentenced to forfeit the claim for which the offence was committed, and to pay a fine not exceeding one thousand rupees, and to be confined (in certain cases) for a period not exceeding one year.

5, 1797, and for the ceded provinces by Sections 9 and 10, Regulation 3, 1804, with the following modifications.

"The court of circuit, on being satisfied that the proclamation directed<sup>1</sup> has been duly made in the police jurisdiction in which the offence may be alleged to have been committed, are to proceed to examine the evidence for the prosecution, and after the evidence is closed, shall transmit it to their sudder station. On the receipt of the evidence, the judges present at the sudder station shall refer it to the pundit of the provincial court of appeal, who is hereby authorized and required to deliver, in writing, the *bewustah* or exposition of the law of the *Shaster*, as to whether the facts contained in the evidence amount to proof of the prisoner or prisoners having committed *dhurnah*; and in the event of such *bewustah* being in the affirmative, the said judges, if present, shall sentence the prisoner or prisoners to forfeit all title to the right or claim for the realization of which the misdemeanor shall have been committed, and to pay a fine to government proportioned to the situation and circumstances in life of the prisoner or prisoners; provided that the amount shall not exceed, in any case, the sum of one thousand sicca rupees; and also in instances attended with great aggravation, to be confined in the jail of the civil court for a period not exceeding one year; and shall issue their warrant to the magistrate, in whose custody the prisoner or prisoners may be detained, to carry the sentence into execution without reference or delay."

Barbarous custom among the tribe of Raj-comars, of destroying their infant female children.

Obligation taken from the Raj-comars in Benares, in 1799.

And by R. 21, 1795, § 13, as well as R. 3, 1804, § 11, for the ceded provinces, any Raj-comar killing his child, in manner stated, to be tried for murder. Proclamation issued, and rule enacted by R. 4, 1797, § 6, (re-enacted for the ceded provinces

A barbarous custom, which is supposed to have originated in principles of family pride, and apprehension of dishonor, from inability to provide for daughters by a suitable marriage, was formerly prevalent amongst the tribe of Raj-comars, inhabiting the borders of the province of Benares, as well as some parts of the ceded provinces, of destroying their infant female children, by suffering them to perish for want of sustenance. With a view to prevent the continuance of this inhuman practice in the province of Benares, an obligation was taken from the Raj-comars referred to, in the month of December, 1799; and by Section 13, Regulation 21, 1795, for Benares, as well as by Section 11, Regulation 3, 1804, for the ceded provinces, any Raj-comar "who shall designedly cause the death of his female child, by prohibiting its receiving nourishment, or in any other manner," is declared liable to trial, as in other criminal cases, before the court of circuit and nizamat adawlut, on a charge of murder.\*

In consequence of two men of the sutar cast having been convicted of the murder of five women, said to have practised sorcery, a proclamation was published in February, 1792, and September, 1794, and enacted into a regulation for the provinces of Bengal, Behar, Orissa, and Benares, by Section 6, Regulation 4, 1797, (re-enacted for the ceded provinces by Section 34, Regu-

<sup>1</sup> In Section 2, R. 5, 1797; for the provinces of Bengal, Behar, and Orissa; and Section 9, R. 3, 1804, for the ceded provinces. A proclamation, prohibiting the practice of sitting *dhurna*, and notifying that any person who may practise the same, after the publication of it, will subject himself to the prescribed punishment, was ordered to be published in every police jurisdiction, and afterwards transmitted to the magistrate, to be laid before the court of circuit, with any trial for *dhurna*, in such jurisdiction.

\* It was directed in Section 11, Reg. 3, 1804, for the ceded provinces, that the magistrates, immediately on receipt of that regulation, should issue a proclamation throughout their respective jurisdictions, prohibiting the inhuman practice referred to. This proclamation was also repeated by order of the nizamat adawlut in the year 1809, with instructions to the magistrates to take particular care that returns of the publication should be made by their police officers.

lation 7, 1803,) to the following effect :—" If any person or persons of the sutar cast, or of any other cast or persuasion, within the British territories, shall hereafter put any person to death, on the ground of his or her being versed in, and practising sorcery ; such person or persons, on being convicted of the crime, shall be held guilty of murder, and shall be invariably punished accordingly : and if any persons shall either actually form themselves into an assembly, for the purpose of trying any man or woman on a charge of witchcraft ; or any other charge ; or shall cause such assemblies to be held ; and any person or persons shall in consequence be put to death ; they shall be considered to be principals, or accomplices, in the murder, and be dealt with accordingly."

by R. 7, 1803, § 33, to prevent persons being put to death on the ground of their practising sorcery.

In the year 1802, it was represented to Government, that an inhuman practice of sacrificing children, by exposing them to be drowned, or to be devoured by sharks, continued to prevail at the island of Saugur, and at Bansbaryah, Chogdah, and other places on the river Ganges. At Saugur especially, such sacrifices were made at fixed periods, namely, the day of full moon in November and in January ; at which time also grown persons devoted themselves to a similar death ; and children thrown into the sea at Saugur, were not, in general, rescued, as said to have been customary at other places. This practice was stated to arise from superstitious vows ; but, on enquiry, was not found to be sanctioned by the Hindoo law ; nor countenanced by the religious orders ; or by the people at large ; nor was it, at any time, authorized by the Hindoo or Mohummudan Governments in India. The persons concerned in the perpetration of the crime were therefore, on conviction, liable to the punishment of murder ; but for general information, as well as for the more effectual prevention of the practice in future, it was publicly declared by Section 2, Regulation 6, 1802, that " if any person or persons shall wilfully, and with the intention of taking away life, throw or cause to be thrown, into the sea, or into the river Ganges, or into any other river or water, any infant, or person not arrived at the age of maturity, with or without his or her consent, in consequence whereof such person, so thrown into water, shall be drowned, or shall be destroyed by sharks or by alligators, or shall otherwise perish ; the person or persons, so offending, shall be held guilty of wilful murder ; and on conviction, shall be liable to the punishment of death ; and all persons, aiding or abetting the commission of such act, shall be deemed accomplices in the murder, and shall be subject to punishment accordingly." It was further declared by Section 3, of the same regulation, that " if a child, or any person not arrived at maturity, be thrown into water, as stated in the preceding section, and be rescued from destruction, or by any means escape from it, the persons who shall have been active in exposing him or her to danger of life, and all aiders and abettors of such act, shall be held guilty of a high misdemeanor ; and on conviction, shall be liable to such punishment as the courts of circuit, under the *Futwa* of their law officers, may judge adequate to the nature and circumstances of the case." The magistrates of districts, wherein the sacrifice of children had been practised, were further required, by Section 4 of the regulation abovementioned, to be vigilant in preventing the continuance of the practice ; and to cause the foregoing provisions to be, from time to time, proclaimed at the places and periods where, or when, such sacrifices had heretofore been effected.

Practice of sacrificing children by exposing them to be drowned, or devoured by sharks.

Declared by R. 6, 1802, to be punishable as murder, if the infant be drowned, or destroyed.

Or punishable as a high misdemeanor, if the infant be thrown into water, and rescued, or escape.

Magistrates further required to be vigilant, in preventing a continuance of this practice.

It appearing that many prisoners, convicted of crimes and misdemeanors before the late *Naib Nazim*, the former criminal courts in the province of Benares, and the courts of circuit established since the year 1790, were in confinement under sentences for the payment of the price of blood ; the restoration of stolen property, or its value ; pecuniary compensation and dama-

R. 14, 1797, § 2. Court of nizamat empowered to grant relief to prisoners confined under sentences of

the *Naib Názim*, of the former criminal courts in Benares, and of the courts of circuit established since 1790, for the payment of the price of blood, restoration of stolen property; pecuniary compensation to individuals; or fines to Government.

Rule enacted to prevent a recurrence of similar sentences, and to mark more clearly the distinction between the civil and criminal courts. R. 14, 1797, § 5, re-enacted for ceded provinces by first clause of § 39, R. 7, 1803.

Further provision made by R. 14, 1797, and the second clause of § 39, R. 7, 1803, for committing to imprisonment, the fines prescribed by the Mohummudan law, in cases not involving murder or homicide. Explained by R. 14, 1797, § 7, 8, and by third clause of § 39, R. 7, 1803, as not meant to prohibit the restitution of stolen property; nor to restrict the criminal courts from adjudging a re-imbursement of actual costs, in particular instances. Difficulty of proof in cases of *Zinâ*, or whoredom, under the Mohummudan law

ges to the parties injured by them; or fines to Government; and that such sentences, from inability of the prisoners to comply with the terms of them, must, if left to take their course, frequently operate as judgments of imprisonment for life; or for a period greatly out of proportion to the offences committed; it was judged proper to vest the court of nizamat adawlut with powers to grant relief to prisoners so circumstanced. That court was accordingly authorized by Section 2, Regulation 14, 1797, to require from the several magistrates reports of the cases of all prisoners in their custody, under sentences of the nature abovementioned; and upon receiving the same, to grant such relief to the prisoners as they should consider each case, in justice, to require. Individuals, having claims on the prisoners so relieved, were permitted to prefer them to the magistrates; who were directed to report them, with their sentiments, for the consideration of the nizamat adawlut; and the decision of the Governor General in Council. To prevent a recurrence of similar sentences, and also to mark more clearly the distinction between the courts of civil and criminal jurisdiction, it was further enacted by Section 3, Regulation 14, 1797, (re-enacted for the ceded provinces by the First Clause of Section 39, Regulation 7, 1803,) that "after the promulgation of this regulation, no pecuniary compensations, nor sums as damages, shall be adjudged to, or be recoverable by individuals, in any criminal prosecution; nor shall any fines be imposed by any court of criminal jurisdiction, save and except to the use of Government; and whenever a fine to the use of Government shall be imposed, the court which may pass the sentence, shall at the same time, weighing all the circumstances of the case, fix a definite period of imprisonment, to be held as equivalent to the fine, at the expiration of which the persons convicted shall be discharged, although they should have omitted to pay the fine. The imprisonment awarded by the courts of circuit under this section, as an equivalent for fines imposed by them, shall be temporary in all cases, and not for life; and their sentences shall be executed without reference to the nizamat adawlut." It was likewise provided by Section 4, Regulation 14, 1797, (and by the second clause of Section 39, Regulation 7, 1803, for the ceded provinces) that "whenever the law officers of the courts of circuit shall declare prisoners liable to *Diyyat*, or pecuniary fines of any kind, for any other acts than murder, and the several descriptions of homicide specified in Section 3, Regulation 4, 1797, the courts of circuit shall, at their discretion, commute such *Diyyat*, or fines, to imprisonment, for such period as they may think adequate to the offence; and their sentences in such instances shall be carried into execution without reference to the nizamat adawlut, if for temporary imprisonment; or referred to that court, if for imprisonment for life, which shall at its discretion confirm the said sentences, or mitigate or entirely remit the imprisonment awarded." Provision was at the same time made by Sections 7 and 8, Regulation 14, 1797, (and by the third clause of Section 39, Regulation 7, 1803, for the ceded provinces,) that nothing contained in the rules stated "shall be construed so as to prohibit the restitution, to the lawful owners, of stolen property, recovered and produced before the magistrates, and courts of circuit; nor to restrict the criminal courts from adjudging a re-imbursement of costs, actually incurred upon a prosecution before them, by either of the parties thereto, in particular instances, wherein they shall consider such re-imbursement just and equitable."

It has already been observed, in stating the Mohummudan law of *Zinâ*, or whoredom, (which includes adultery, rape, and incest, as well as fornication) that the severity of the prescribed punishment, in the case of a married man, convicted by full legal proof, appears to have influenced the lawgiver, in requiring such evidence for conviction of the offence as can seldom

be obtained. In truth, it was found by experience, (as noticed in the preamble to Regulation 17, 1817) that the evidence required in cases of *Zinâ*, "is such as to render a legal conviction almost impossible; and the law officers of the nizamat adawlut have declared the insufficiency of presumptive evidence to warrant the infliction of punishment in such cases." The following provisions were therefore enacted in Section 6, of the Regulation abovementioned; with a clause to restrict the prosecution of a married woman for adultery by her husband only.

§ 6. "*First.* In trials before the courts of circuit for adultery, rape, or any other offence within the provisions of the Mohummudan law, in cases of *Zinâ*, and *Fial-i-Shunee*, the *Futwâ* of the law officer of the court of circuit, before whom the trial may be held, shall declare only, whether the prisoner is legally convicted; or, if not, whether there be strong ground of presumption, arising from his free confession, or from credible testimony, or from circumstantial evidence, that he is guilty of the crime charged against him. *Second.* If the *Futwâ*, so given shall declare the prisoner legally convicted, or that there is strong presumption of his guilt, and the judge of circuit, before whom the trial may be held, shall concur in the conviction of the prisoner, or in the presumption of his guilt, so as to render him a proper object of punishment, and the circumstances of the case shall not appear to call for a more severe punishment than what the courts of circuit are authorized to adjudge, under the seventh clause of Section 2, Regulation 53, 1803, the judge shall sentence the prisoner to suffer such punishment as may be deemed adequate to his guilt, and the nature of the offence, not exceeding corporal punishment of thirty-nine stripes, and imprisonment with hard labor for the term of seven years. *Third.* If the prisoner be convicted, or presumed guilty, of the heinous crime of rape, the judge of circuit shall not pass any sentence; but shall refer the trial to the court of nizamat adawlut, for the sentence of that court, under the general regulations in force. *Fourth.* In cases of adultery, it shall be requisite for the conviction and punishment of a married woman, that she be prosecuted by her husband; and no other person shall be deemed competent to prosecute, or prefer the charge against her, in such cases."

The Mohummudan law, which has not prescribed any fixed penalties for perjury, subornation of perjury, and forgery, leaves the punishment of these crimes to be inflicted at discretion, under its provisions of *Tâzeer* and *Seeâsut*, by flagellation, imprisonment, and public ignominy. The prevalence of perjury in the courts of justice requiring that this discretion should be used to the full extent authorized by the Mohummudan law, for the purpose of checking the commission of a crime so dangerous and prejudicial to society, the courts of circuit were authorized by Regulation 17, 1797, (re-enacted for the ceded provinces in Section 40, Regulation 7, 1803,) to adjudge persons convicted of having wilfully given false testimony on oath, or under a solemn obligation esteemed equivalent to an oath, in some judicial-proceeding, and in a matter material to the issue thereof, either to be publicly exposed by *Tusheer*, according to the opinion of Aboo Huneefah, or to suffer corporal punishment and imprisonment, according to the opinion of Aboo Yoosuf and Mohummud; or in cases of enormity, to receive the aggregate punishment according to both opinions; and to cause the word *durogh-go*, or such other words as in the most current local language might concisely express the nature of the crime, to be marked on the forehead of the convict, by a common process denominated *Gôdna*, which leaves a blue mark that cannot be effaced without tearing off the skin. Notwithstanding these provisions however, the flagrant offence of false testimony, with subornation of perjury, and forgery, equally injurious to the rights of individuals and to the due admini-

of evidence, as already noticed.

R. 17, 1817, § 6. Law officers of courts of circuit, how to deliver their *Futwâs* in trials for adultery, and other offences within the Mohummudan law of *Zinâ*, and *Fial-i-Shunee*. Sentence to be passed if the prisoner be convicted, or the *Futwâ* declare strong presumption of his guilt, and the judge concur.

Judge of circuit how to proceed, if the prisoner be convicted or presumed guilty of rape. What person competent to prosecute a charge of adultery against a married woman.

Perjury, subornation of perjury, and forgery, how punishable under the Mohummudan law. Provision made for the punishment of perjury by R. 17, 1797, and for the ceded provinces by § 40, R. 7, 1803.

Found inadequate and rescinded by R. 2, 1807, § 2.

nistration of justice, continued to prevail; and no specific penalties having been attached to these crimes by the Mohammudan law, persons convicted of them were sentenced to various, and in some instances inadequate, punishment, according to the *Futwās* of the law officers. It was therefore requisite, that further provision should be made, to define, as far as the degrees of criminality in different cases might admit, the sentences to be passed by the courts of circuit upon persons convicted before them of wilful perjury, subornation of perjury, or forgery. It was further judged expedient to declare such heinous and prevalent offences not bailable, except in special cases; and to expedite the exemplary punishment of persons, who might be guilty of them before the courts of circuit, by providing for their immediate commitment and trial, when the whole of the requisite witnesses might be in attendance. Regulation 17, 1797, and Section 40, Regulation 7, 1803, abovementioned, were therefore rescinded by Section 2, Regulation 2, 1807; and the following rules were enacted by Sections 3, 4, 5, and 6, of that regulation."

Rules enacted by R. 2, 1807, § 3, 4, 5, and 6, for the punishment of perjury, subornation of perjury, and forgery. Section 3. Sentence to be passed by the courts of circuit, on persons convicted of wilful perjury, or of subornation of perjury, or of forgery.

§ 3. "*First.* If any person amenable to the jurisdiction of a court of circuit shall be convicted before that court, whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence, of the crime of wilful perjury, or of subornation of perjury, or of forgery, as defined in the following section of this regulation; and shall, in consequence, by the *Futwā* of the Mohammudan law officers of the court of circuit, be declared liable to discretionary punishment, (*Tāzeer*, *Acoobut*, or *Seedsut*.) the judge of circuit, before whom the trial may be held, provided he concur in the conviction of the prisoner, (and shall consider him a proper object of corporal and ignominious punishment) shall sentence the offender to be publicly exposed, in the mode commonly denominated *Tusheer*; to have the words *durogh-go*, or *jal-saz*, or others, of similar import, expressing the nature of the crime in the most current local language, marked on the offender's forehead, by the common process of *Godna*; to receive thirty stripes with a corah; and to be imprisoned and kept to hard labor for a period not less than four, and not more than seven years. If it appear proper to banish the prisoner, during the period of his confinement, from the district in which he may have resided, he will be further liable to such sentence, in pursuance of Clause Third, of Section 8, Regulation 53, 1803. Provided however, that if the judge of circuit, on consideration of the circumstances of the case, and the prisoner's situation, shall deem the punishment above specified too severe, he shall submit the trial with his sentiments to the nizamat adawlut, for the final sentence of that court. *Second.* If the judge of circuit differ in opinion from the law officer of the court, with respect to the conviction of the prisoner, he shall not pass any sentence; but shall transmit his own and the magistrate's proceedings, with his sentiments in a letter to accompany them, for the sentence of the court of nizamat adawlut. *Third.* In cases of reference to the nizamat adawlut, this court, after taking the *Futwā* of its law officers, shall, if the prisoner be convicted, sentence him to any punishment deemed proper, not exceeding that specified in Clause First, of this Section." § 4. "*First.* The crime of wilful perjury, subjecting the offender, on conviction, to the punishment stated in the foregoing section, is hereby declared to be, giving intentionally and deliberately, before a court of judicature, magistrate, or other authorized public officer, a false deposition, upon oath, or under a solemn declaration, taken instead of an oath, relative to some judicial proceeding, civil or criminal, and upon a point material to the issue thereof. *Second.* Subornation of perjury, punishable under the preceding section, is declared to be the crime of procuring, or causing, another person to commit the offence of perjury as

How to proceed if the stated punishment appear too severe. Or if the judge of circuit differ in opinion from the law officer respecting the prisoner's conviction. Court of nizamat adawlut how to proceed in cases referred to it. Section 4. Definition of the crime of wilful perjury, punishable under the above rule.

And of subornation of perjury.

above described. *Third.* The penalties for forgery, stated in Section 3, are meant to include all fraudulent and injurious fabrications, or alterations, of written deeds, or of written or printed papers, of whatever description; as well as all counterfeit seals or signatures thereto; and the illicit imitation of any public stamp, or stamp paper, established by Government. It is further hereby declared, that persons convicted of procuring, or causing, any such forgery, will be liable to the same punishment, as those convicted of having actually committed the forgery, at the instigation of others." § 5. "Persons charged with the crime of perjury, subornation of perjury, or forgery, as defined in the preceding section, and appearing to the civil or criminal courts, by whom they may be ordered to be brought to trial before the courts of circuit, to have been guilty of the charge, shall not be admitted to bail, (notwithstanding any thing declared to the contrary in any existing regulation) unless specially authorized by the court under whose directions they are committed for trial. But nothing herein contained shall be construed to preclude the magistrate from admitting to bail persons committed by him for trial, on charges preferred originally before him, in cases cognizable by him under the regulations, without any order from a civil or criminal court for the commitment of such persons for trial before the court of circuit."

§ 6. "Whenever a witness giving evidence before a court of circuit may be considered by the judge of that court to be guilty of wilful perjury; or whenever a person attending a court of circuit may be considered by the judge of that court to be guilty of subornation of perjury, or of forgery, in any trial or matter depending before the court; and the whole of the witnesses required for the proof of the charge, and for the defence of the accused, may be also in attendance; it shall be competent to the judge of circuit to direct the zillah or city magistrate to commit the person so charged for immediate trial before the court of circuit; instead of postponing the commitment for trial at the ensuing session of the court of circuit. Provided, that nothing in this section shall be construed to authorize the conviction or punishment of any person, charged with the crimes specified, until he shall have been regularly put upon his trial; or until any material evidence which he may have to offer in his defence shall have been received, and duly considered."

The provision made in Section 3, of the regulation above cited, for a reference to the nizamat adawlut, in all cases wherein the judge of circuit might deem the prescribed punishment too severe, having been found productive of delay and inconvenience; and the rules contained in that regulation appearing to be in other respects defective, the undermentioned additional rules were enacted in Sections 9 to 14, of Regulation 17, 1817.

§ 9. "*First.* The provisions contained in Regulation 2, 1807, for the punishment of persons convicted of wilful perjury, or subornation of perjury, or of forgery, or procuring forgery, are hereby declared subject to the following modifications. *Second.* The judge of circuit, before whom a prisoner may be convicted of any of the offences specified in the above clause, as defined in Regulation 2, 1807, or in the present regulation, provided he concur with the law officer in the conviction of the prisoner, shall sentence him to be publicly exposed in the mode commonly denominated *Tusheer*, to receive thirty stripes with a corah, and to be imprisoned in banishment from the district, for the period of seven years; or for the term of fourteen years, if the prisoner be convicted of having forged, or procured to be forged, any counterfeit coin in imitation of any of the gold, silver, or copper coins of the British Governments in India, or of any coin usually received as money in the British possessions in India; or of having forged, or procured to be forged, any counterfeit stamp, or stamp paper, in imitation of any public stamp established by the British Governments in India; or any counterfeit

To what descriptions of forgery the stated penalties are applicable.

Section 5.  
In what cases persons charged with perjury, subornation of perjury, or forgery, may, or may not, be admitted to bail.

Section 6.  
In what cases persons guilty of perjury, subornation of perjury, or forgery, before a court of circuit, may be brought to immediate trial in that court.

Additional rules enacted in R. 17, 1817, § 9 to 14.

Section 9.  
Provisions in R. 2, 1807, modified.  
Sentence to be passed on persons convicted before the court of circuit of any of the above offences as defined in Regulation 2, 1807, or in the present Regulation.  
Enhanced penalty on persons convicted of having forged or procured to be forged counterfeit coin, &c.



Power of the judge of circuit to mitigate the prescribed punishment, to a certain extent, in cases of extenuation.

If a further mitigation of punishment appear proper, the judge of circuit to pass sentence according to the preceding clause, and refer the trial to the nizamut adawlut.

Section 10. Provision for the punishment of knowingly and fraudulently uttering forged instruments, counterfeit stamp paper, coin, bank notes, promissory notes, or other securities for money. Sentence to be passed on persons convicted before a court of circuit or nizamut adawlut of any of the above offences.

In cases of an aggravated nature, or a repetition of the offence after first conviction and punishment, the judge of circuit may add stripes. Rule in cases of a third conviction after discharge from former convictions.

Provisions in the above clauses applicable to persons convicted of clipping, drilling, defacing or debasing the gold or silver coin.

Section 11. Persons convicted before a magistrate of having in possession counterfeit coin or stamp paper, without lawful excuse, punishable by

note, or other security for money, in imitation of any of the public securities of the British Governments in India, or of the bank notes issued by any public bank in the British possessions in India; unless the judge of circuit, on consideration of all the circumstances of the case, shall be of opinion that any part of the prescribed punishment is too severe; in which case he is authorized to mitigate the sentence to imprisonment, with or without *Tusheer*, for any period not less than seven years, in the abovementioned cases of forgery of counterfeit coin, public stamps, securities or bank notes, and procuration of such forgery; and to imprisonment, with or without *Tusheer*, for any period not less than three years, in all other cases within the provisions of Regulation 2, 1807, and the present regulation. *Third.* If in any instance the judge of circuit shall be of opinion, that a further mitigation or remission of punishment is necessary, he shall, provided he concur in the conviction of the prisoner, pass sentence according to the preceding clause, and refer the trial, with his sentiments at large, for the final sentence or order of the court of nizamut adawlut."

§ 10, "*First.* The provisions of Regulation 2, 1807, not including the offence of fraudulently issuing and publishing as true, or otherwise fraudulently giving effect or attempting to give effect to, fabricated deeds and papers, knowing the same to be false and fabricated; or the offence of using, issuing, selling, or otherwise disposing of, or attempting to dispose of, counterfeit stamp paper, bearing the imitation of a public stamp, knowing the same to be counterfeit; or the offence of paying, or tendering in payment, counterfeited coin, bank notes, promissory notes, or other securities for money, knowing the same to be counterfeit; the following additional provisions are enacted for the punishment of these offences respectively. *Second.* If any person shall be convicted before a court of circuit, or the court of nizamut adawlut, of any of the offences specified in the above clause, he shall be sentenced to imprisonment for such period, not exceeding seven years, as the judge of circuit may deem adequate to the nature and circumstances of the case: and shall also, in all instances of an aggravated nature, or of a repetition of the offence, after being once convicted and discharged, be sentenced to public exposure by *Tusheer*. In every instance of a repetition of the offence, after a previous conviction and discharge, the judge of circuit may further, at his discretion, sentence the offender to receive corporal punishment, not exceeding thirty stripes, with a corah or rattan. If a person twice convicted and discharged, be again found guilty of any of the offences specified in the preceding clause, and the judge of circuit shall be of opinion that he ought to be imprisoned for a longer period than seven years, he shall refer the trial, with his sentiments, for the sentence of the court of nizamut adawlut, in pursuance of the seventh clause of Section 2, Regulation 53, 1803. *Third.* The provisions in the above clause are further declared applicable to persons convicted of clipping, filing, drilling, defacing, or debasing, the gold or silver coin of the British Governments in India; or any coin usually received as money within the British possessions in India; the whole of which offences, in the regulations for the coinage, are already made cognizable by the criminal courts, and declared punishable as the law may direct." § 11. "If any person, subject to the jurisdiction of a zillah or city magistrate, shall be convicted of having in his, or her possession, without lawful or satisfactory excuse, any counterfeited coin, or stamp paper, bearing an imitation of any current coin, or public stamp, and shall not show good and sufficient cause for having such counterfeit coin, or stamp paper in his, or her possession, the persons so convicted shall be sentenced by the magistrate to pay a fine equal to four times the nominal value of such counterfeit coin, or stamp paper, in his or her possession, one moiety of which fine

shall, on receipt of it, be given to any informer, or informers, who may have given information of the offence, and established the truth of it. In the event of such fine not being paid, the person convicted shall be confined for such period as the magistrate may direct, not exceeding six months. The counterfeit coin or stamp paper, shall also, in every instance, be forwarded to the mint master or superintendent of stamps respectively."

§ 12. "First. Such part of Section 3, Regulation 2, 1807, or of any other regulation in force, as directs that offenders, sentenced to imprisonment for a limited period, shall have the crimes, of which they are convicted, marked on their foreheads by the process of "*Godna*," is hereby rescinded. Second. Convicts sentenced to imprisonment for life, shall alone be marked by the process of "*Godna*," in the manner and for the purpose stated in Section 11, Regulation 4, 1797, and Section 35, Regulation 7, 1803." Third. It shall further be competent to the court of nizamat adawlut to except any prisoners, sentenced to imprisonment for life, from being marked, as directed in the sections abovementioned, in cases wherein there may appear to be special reason for such exception. Fourth. When convicts, sentenced to imprisonment for life, and not specially excepted by the nizamat adawlut, may be marked on the forehead as prescribed by Section 11, Regulation 4, 1797, and Section 35, Regulation 7, 1803, the magistrate shall cause the operation to be performed early in the morning, and shall adopt precautions to prevent the convict's defacing the inscription in the course of the day. The magistrates are also directed to renew the inscription, if defaced, so as to become illegible, on the forehead of any convicts under sentence of imprisonment for life."

Section 12. Punishment of *Godna* restricted, in future, to convicts sentenced to imprisonment for life.

Nizamutadawlut empowered, in special cases, to exempt a prisoner from being marked with the *Godna*. In what manner the operation of *Godna* to be performed.

The magistrate to renew inscription if defaced.

§ 13. "First. In addition to the rules contained in Sections 26, 30, and 33, Regulation 12, 1817," it is hereby declared that any person convicted before a court of circuit, or the court of nizamat adawlut, of having given intentionally and deliberately a false deposition upon oath, or under a solemn declaration, taken instead of an oath, before a public officer authorized to take the same, shall be deemed guilty of wilful perjury, and liable to the punishment of that offence, declared in Section 9, of this Regulation, although the deposition so taken may not relate to any judicial proceeding, provided it shall clearly appear to have been given falsely and criminally on a point material to the case, in which the deposition may have been taken. Second.

Section 13. Sentence to be passed on persons convicted of having wilfully given a false deposition on oath, or solemn declaration before any public officer authorized to take the same

<sup>1</sup> The rule here cited is in the following terms—"To facilitate the re-apprehension of convicts, sentenced to imprisonment for life, who may make their escape from jail, all convicts of this description shall have the following particulars inscribed on their foreheads, viz. their name, the crime of which they may have been convicted, the date of the sentence passed against them, and the name of the division of the court, by which it may have been passed. This inscription is to be made by the process termed *Godna*, by which the Hindoo women ornament their faces; and which leaves a blue mark that cannot be effaced without tearing off the skin."

<sup>2</sup> These Sections of R. 12, 1817, "for securing the better administration of the office of *Putwary*, in the ceded and conquered provinces, the provinces of Behar and Benares, and the district of Cuttack;" (since extended to the province of Bengal by R. 1, 1818, and R. 1, 1819,) relate to the village *Putwaries*, and other native agents employed by the proprietors or farmers of land in the management of their estates or farms, or in keeping the accounts respecting them. It is declared in the rules adverted to, that any such *Putwary*, or other agent "giving intentionally and deliberately a false deposition on oath, when examined before a collector, or the officer of a collector, duly empowered to take his examination, relative to the lands, produce, collections, and charges, of the village or villages, to which he belongs, shall be held and considered guilty of perjury; and shall be liable, on conviction, before a court of circuit, to the penalties which are or may be prescribed for that offence in the regulations; and any person causing or procuring a *Putwary* (or other agent) to commit the offence of perjury, as above described, is declared guilty of subornation of perjury; and punishable under the provisions of the regulations."

Persons convicted of causing or procuring the above offence, how punishable.

Section 14. Recapitulation of Section 2, R. 3, 1801. Extended to upper provinces by R. 7, 1813, § 3; restricting prosecution for perjury against parties, or witnesses, in the civil courts. The rule above cited, with a discretion to the judge to commit to prison or admit to bail, extended to all allegations of perjury, or subornation of perjury, against parties or witnesses in any civil suit, or any civil proceeding before any of the authorities herein mentioned. Mode of procedure when the proceedings on which the charge is grounded, may be held before a register, native commissioner, or other officer.

And in cases wherein the proceedings may be held before the judges of the provincial courts, or of the court of sudder dewanny adawlut, or any single judge of those courts.

Restriction against prosecutions of parties and witnesses in the civil courts extended to charges of perjury, or subornation of perjury,

Any person convicted before a court of circuit, or the court of nizamat adawlut, of having procured or caused another to commit the offence described in the above clause, shall be deemed guilty of subornation of perjury : and shall be liable to the punishment of that offence, declared in Section 9 of this regulation."

§ 14. "First. By Section 2, Regulation 3, 1801, extended to the upper provinces by Section 3, Regulation 7, 1813, with a view to prevent unfounded and malicious charges of perjury or subornation of perjury, it is provided that the zillah and city magistrates shall not receive any charges of perjury, which may be preferred by parties in civil suits, either against their own witnesses, or against the witnesses of the adverse party, or charges of subornation of perjury against the adverse parties in such suits; and all individuals whose attendance is required in the civil courts, either as plaintiffs, defendants, or witnesses, are declared not liable to any prosecution of this description, unless committed to take their trial by the zillah or city judge. The following additional provisions are now enacted for the more effectual attainment of the object above stated. *Second.* The rule abovementioned, (with this qualification that the zillah or city judge may commit to prison, or admit to bail, as he shall think proper, under the discretion given by Section 5, Regulation 2, 1807,) shall be considered applicable to all allegations of perjury, or subornation of perjury, against parties or witnesses in any civil suit, or any civil proceedings whatever, before the judge or register of a zillah or city court, or before a sudder ameen or moonsiff, or an arbitrator or arbitrators appointed to investigate such suits; or an officer employed by a zillah or city civil court, in any local or other enquiry; or in the execution of any civil process. In all such cases the proceedings, on which the charge of perjury, or subornation of perjury, may be grounded, if not held before the zillah or city judge in the first instance, shall be referred to him by the register, commissioner, or other officer, before whom the proceedings may have been held, with the sentiments of the register, commissioner, or other officer, upon the case; and if the judge be of opinion that there are sufficient grounds for bringing the accused party to trial before the court of circuit, on a charge of perjury, or subornation of perjury, he shall record his opinion to that effect; and at the same time direct whether the accused shall be admitted to bail, or kept in custody. An authenticated copy of the order passed by him, with the whole of the original papers relative to the case, shall then be transferred to the cutcherry of the magistrate, that the order of the judge may be carried into effect, and the case brought before the court of circuit, in the same manner as if the charge had been instituted and proceeded upon, in the court of the magistrate. *Third.* If the judges of the provincial courts, or of the court of sudder dewanny adawlut, or any single judge of those courts respectively, in cases within the competency of a single judge, shall be of opinion that there are sufficient grounds, on any civil proceeding before them, for bringing a party or witness to trial, on a charge of perjury, or subornation of perjury, they shall record their sentiments to that effect; and at the same time direct whether the party accused shall be admitted to bail, or kept in custody;—an authenticated copy of the order so passed, with the whole of the original papers relative to the case, shall then be transmitted to the proper zillah or city magistrate, for the purpose of being proceeded upon, as stated in the preceding clause. *Fourth.* The restriction against prosecutions for perjury and subornation of perjury of witnesses and parties in the civil courts, unless the officers presiding in these courts shall be of opinion that there are grounds for such prosecutions, are hereby extended to all charges of perjury, or subornation of perjury, against witnesses and prosecutors in the criminal courts, or before any public officer authorized to hold enquiries respecting offences

of a criminal nature. Provision is already made by Section 6, Regulation 2, 1807, for such cases, when persons attending the session of a court of circuit may appear to the judge of that court to have been guilty of perjury, or subornation of perjury. The judges of the courts of circuit at the sudder stations of those courts, and the judges of the court of nizamat adawlut, or a single judge of those courts respectively in cases within the competency of a single judge, are further hereby declared empowered to direct the proper zillah or city magistrate to commit to custody, or hold to bail, and to bring to trial at the regular sessions of the courts of circuit, any person who, from proceedings before the above courts, may appear to have been guilty of the crime of perjury, or subornation of perjury; and the zillah and city magistrates themselves are vested by the regulations with full authority to commit, or hold to bail, for trial before the courts of circuit, all persons who on their own proceedings, or those of their assistants, may be considered guilty of either of the crimes abovementioned. The magistrates of the several zillahs and cities are therefore prohibited from receiving and acting upon any charges of perjury or subornation of perjury, alleged to have been committed in the course of any trial, or enquiry of a criminal nature, excepting such as may come before them in the manner provided for by this section. *Fifth.* The zillah and city magistrates are further restricted from receiving and acting upon charges of perjury, or subornation of perjury, alleged to have been committed before a collector, or other public officer, unless such officer shall transmit the proceedings held before him, with his opinion that there are grounds for believing such charge to be well founded. In that case, and if the magistrate on inspection of the proceedings, or after making such further enquiry as he may deem necessary, shall be of opinion that there are grounds for bringing the party accused to trial before the court of circuit, he shall pass an order to that effect; and shall at the same time direct, whether the accused shall be held to bail or kept in custody, till the session of the court of circuit. *Sixth.* In all the cases provided for by this section, if there be no private prosecutor to whom the magistrate may judge it proper to leave the prosecution of the case, before the court of circuit, he shall appoint the vakeel of Government, or some other qualified person to conduct the prosecution before the court of circuit, and shall furnish him with the requisite information and instructions for that purpose."

against prosecutors and witnesses in the criminal courts, or before any public officer authorized to hold enquiries into offences of a criminal nature.

Further restriction when the offence may be alleged to have been committed before a collector or other public officer.

Provision for the appointment of a public prosecutor when judged proper by the magistrate.

Provisions made by R. IV. 1804, for the immediate punishment of offences against the state, in certain cases, by the sentence of courts martial.

The rules established by Regulations 4, 1799, and 28, 1803, for the trial of persons charged with crimes against the state, will be more properly included in the next section of this Analysis. But as Regulation 10, 1804, "for declaring the powers of the Governor General in Council to provide for the immediate punishment of certain offences against the State by the sentence of courts martial, involves a material alteration in the provisions of the Mohummudan law for *Bugháwut*, or rebellion, as well as a temporary supersession of the ordinary criminal courts, by the establishment of martial law, during the existence of war, or open rebellion, in any part of the British territories; it is here introduced at length; with the preamble, which states the grounds and objects of it.

"Whereas, during wars in which the British Government has been engaged against certain of the native powers of India, certain persons, owing allegiance to the British Government, have borne arms, in open hostility to the authority of the same, and have abetted and aided the enemy, and have committed acts of violence and outrage against the lives and properties of the subjects of the said Government; and whereas it may be expedient that, during the existence of any war in which the British Government in India may be engaged with any power whatever, as well as during the existence of open rebellion against the authority of the Government, in any part of the British territories

Preamble to the regulation stating the grounds and objects of it.

Section 2.  
By whom, and  
under what  
circumstances,  
the functions  
of the ordina-  
ry criminal  
courts may be  
suspended;  
and martial  
law establish-  
ed.  
What persons  
liable to imme-  
diate trial, by  
courts martial,  
so established;  
and for what  
offences

Section 3.  
Persons owing  
allegiance to  
the British Go-  
vernment and  
convicted of  
any of the  
crimes speci-  
fied, declared  
liable to im-  
mediate pun-  
ishment of  
death.  
Also to forfei-  
ture of all pro-  
perty, real and  
personal, pos-  
sessed within  
the British ter-  
ritories when  
the crime was  
committed.  
Section 1.  
But the Go-  
vernor Gene-  
ral in Council  
may cause per-  
sons charged  
with any of the  
crimes speci-  
fied to be tried  
before the ordi-  
nary courts,  
or before a  
special court,  
if the immedi-  
ate trial by  
court martial  
shall not ap-  
pear necessary.

subject to the government of the Presidency of Fort William, the Governor General in Council should declare and establish martial law, within any part of the territories aforesaid, for the safety of the British possessions, and for the security of the lives and property of the inhabitants thereof, by the immediate punishment of persons owing allegiance to the British Government, who may be taken in arms, in open hostility to the said Government, or in the actual commission of any overt act of rebellion against the authority of the same, or in the act of openly aiding and abetting the enemies of the British Government, within any part of the territories above specified; the following regulation has been enacted by the Governor General in Council, to be in force, throughout the British territories immediately subject to the government of the Presidency of Fort William, from the date of its promulgation."

§ 2. "The Governor General in Council is hereby declared to be empowered to suspend, or to direct any public authority, or officer, to order the suspension of, wholly or partially, the functions of the ordinary criminal courts of judicature, within any zillah, district, city, or other place, within any part of the British territories, subject to the government of the Presidency of Fort William, and to establish martial law therein, for any period of time, while the British Government in India shall be engaged in war with any native or other power; as well as during the existence of open rebellion against the authority of the Government, in any part of the territories aforesaid; and also to direct the immediate trial, by courts martial, of all persons owing allegiance to the British Government, either in consequence of their having been born, or of their being resident, within its territories, and under its protection, who shall be taken in arms, in open hostility to the British Government, or in the act of opposing by force of arms the authority of the same, or in the actual commission of any overt act of rebellion against the state, or in the act of openly aiding and abetting the enemies of the British Government, within any part of the said territories." § 3. "It is hereby further declared, that any person born, or residing, under the protection of the British Government, within the territories aforesaid, and consequently owing allegiance to the said Government, who, in violation of the obligations of such allegiance, shall be guilty of any of the crimes specified in the preceding section, and who shall be convicted thereof, by the sentence of a court martial, during the suspension of the functions of the ordinary criminal courts of judicature and the establishment of martial law, shall be liable to the immediate punishment of death, and shall suffer the same accordingly, by being hung by the neck till he is dead. All persons who shall, in such cases, be adjudged, by a court martial, to be guilty of any of the crimes specified in this regulation, shall also forfeit to the British Government all property and effects, real and personal, which they shall have possessed within its territories, at the time when the crime, of which they may be convicted, shall have been committed." § 4. "The Governor General in Council shall not be precluded, by this regulation, from causing persons charged with any of the offences described in the present regulation, to be brought to trial, at any time, before the ordinary courts of judicature, or before any special court appointed for the trial of such offences, under Regulation 4, 1799, and Regulation 20, 1803, instead of causing such persons to be tried by courts martial, in any cases wherein the latter mode of trial shall not appear to be indispensably necessary."

\* The following circular instructions to the magistrates of the ceded and conquered provinces, for their guidance when martial law might be proclaimed under the above regulation, were transmitted by order of Government, in a letter from the chief secretary, dated the 11th April, 1805.

"You have already been furnished with Regulation 10, of 1804, which provides

By Section 10, Regulation 4, 1797, the nizamat adawlut were authorized, under the discretion allowed by the Mohummudan law, to order any prisoners, sentenced to imprisonment for life, or for a limited period of seven years or upwards, to be transported to some place beyond sea. And by Section 5, Regulation 2, 1799, (corresponding with Section 22, Regulation 8, 1803, for the ceded provinces) any convicts sentenced to imprisonment by the courts of circuit, or nizamat adawlut, who, during the period of their sentences, might escape, and be re-apprehended, were declared liable to transportation by order of the nizamat adawlut; either during the remaining period of their sentences, or for a longer period if the nizamat adawlut should, on consideration of the circumstances of the case, judge it proper to direct the same. But these rules were found open to objection, with respect to convicts sentenced to short periods of imprisonment, from difficulties attending their return to Bengal, from the place of transportation, after the expiration of their sentences; and it was therefore judged advisable that none, except persons convicted of heinous offences, and sentenced to be imprisoned for life, should be transported in future beyond sea; substituting

Former rules for transportation of convicts, sentenced to imprisonment for seven years or upwards; of who might escape during the period of their sentences, and be re-apprehended; found open to objection. Transportation in consequence, restricted to persons convicted of heinous offences, and sentenced to be imprisoned for life

for the eventual establishment of martial law under the circumstances therein described, within any part of the British territories subject to the immediate authority of this Government. I am now commanded by His Excellency the Most Noble the Governor General in Council to communicate to you the following special orders for the regulation of your conduct in the event of its being at any time considered to be necessary, or proper, to proclaim martial law in the district under your authority. Whenever martial law shall be proclaimed, you will direct all officers in command of troops, which shall be employed within your jurisdiction, to act under the proclamation, until it shall be recalled; leaving it to the discretion of such officers to confine the operation of the proclamation to the principal person, or persons, concerned in any of the acts of rebellion described in the regulation, or to extend it to their principal adherents and followers; as the exigency of the case may require. If any person or persons, charged with any of the overt acts of rebellion specified in Regulation 10, of 1804, shall be apprehended by any military officer, when not in the actual commission of offences of that description, they are to be delivered over by the military to the civil power; and you are required to commit such persons to close custody; and to adopt the necessary measures for bringing them to trial on a charge of high treason. In cases of such commitment you will communicate the circumstances, without delay, to the court of circuit for the division of Bareilly, with intimation when the trial may come on; in order that the court may depute two of its members to your station for the trial of the prisoners, in virtue of powers vested in them to that effect under Regulation 20, of 1803. You are commanded to attach all property, whether real or personal, which shall be situated within your jurisdiction, belonging to any person or persons who may be guilty of overt acts of rebellion against the authority of Government; and to continue such property under attachment until the pleasure of the Governor General in Council on the occasion shall be known. Whenever you shall attach landed estates in virtue of the present order, you will place the same under the management of the collector of the district; with instructions to adopt the proper measures for realizing the revenues of such estates. Should the property of the rebels be situated in any other district, you will make the necessary communication to the judge and magistrate of such district, requiring him at the same time to attach the property in question, and to continue the same under attachment until he shall be furnished with the orders of Government for his further guidance in the disposal of the property. If any property, of persons charged with acts of rebellion against the State, shall be attached by any military officers employed in the district under your authority, such property is to be delivered over to your charge; whether the owners shall have been taken in arms or otherwise; and to be retained under attachment, until you shall have received the orders of Government for its disposal. The Right Honorable the Commander in Chief will be requested to make these rules known to all military officers employed in the command of detachments within the limits of the ceded and conquered provinces, and to enjoin a strict adherence to them in all cases to which they may be applicable."

Banishment from the district in which the offender's place of abode is situated, with hard labor, substituted for convicts sentenced to limited imprisonment. Rules for these purposes enacted by R. 53, 1803, § 8. What convicts liable to transportation beyond sea.

Or to banishment from the district in which the prisoner's place of abode is situated.

Lists of convicts sentenced to transportation, or banishment.

banishment from the district in which the offender's place of abode may be situated, with hard labor on the public roads, or other public works, for convicts sentenced to limited imprisonment, who may be deemed proper objects of this mode of punishment. The following rules were accordingly enacted, by Section 8, Regulation 53, 1803.

"*First.* So much of Section 10, Regulation 4, 1797, as authorizes the transportation, to some place beyond sea, of convicts sentenced to be confined for a term of seven years; or for any limited term of years; and directs a reference from the courts of circuit to the nizamat adawlut in all instances wherein they shall consider offenders convicted before them to be proper objects of transportation; is hereby rescinded. *Second.* Transportation beyond sea shall be hereafter restricted to convicts who may be sentenced to confinement for life; and in all instances wherein a sentence of confinement for life may be passed against a prisoner, whether by the courts of circuit in the first instance, or finally by the court of nizamat adawlut, the court passing such sentence, if it deem the prisoner a proper object of transportation beyond sea, shall at the same time adjudge him, or her, to be transported for life." *Third.* In the cases of convicts sentenced to confinement for life, whom the courts of circuit and nizamat adawlut may not consider proper objects of transportation beyond sea, under the preceding clause; as well as in all cases of convicts sentenced to imprisonment for a limited period; the court by whom the sentence is passed, if it deem the same proper, on consideration of the prisoner's offence, may adjudge him to be banished, during the period of his sentence, from the district in which his place of abode is situated; and to be kept to hard labor on the public roads, or other public works, in any other district, to which he may be removed by order of the nizamat adawlut. *Fourth.* The magistrates of the several zillahs, at the close of the half yearly jail-delivery of their respective districts, and the magistrates of the several cities, on the 1st January and 1st July of each year,

<sup>1</sup> This clause was rescinded by Section 2, Regulation 14, 1811, with an intention to substitute, for transportation beyond sea, imprisonment for life in the new jail erected at Allpore, in the vicinity of Calcutta; and to employ the convicts, within the area of the jail, in the manufacture of articles for which there might be a constant demand at the Presidency. But it being afterwards deemed expedient to restore the punishment of transportation, the following enactments were made for that purpose, in Section 2, of Regulation 9, 1813. "*First.* Clauses First and Second, of Regulation 14, 1811, are hereby rescinded; and Clause Second, Section 8, Regulation 53, 1803, is declared to be revived and in full force. *Second.* Provided always, that it shall be competent to the Governor General in Council to detain in the jail at Allpore, for any period which he may deem expedient, any convicts sentenced to transportation. *Third.* It is moreover declared, that all convicts sentenced to transportation, shall be sent to such of the British settlements in Asia, as the Governor General in Council shall appoint; and shall also be liable to be employed at any places within the limits of the settlement, to which they shall be sent, which shall from time to time be fixed on by the local administration. A power is further vested in the Governor General in Council of transferring convicts from one place to another in the settlements aforesaid; and such transfer is hereby authorized as often as the same may be found requisite. The Governor General in Council however, previously to ordering such transfers, will consult the local administration upon the propriety of allowing any convicts to be exempted from removal, whose good conduct shall have merited this indulgence, or who from sickness or infirmity, may not be fit objects to be removed." The provisions of the last mentioned clause were extended, by Section 15, Regulation 14, 1816, "to the exercise of a similar discretion by the Governor General in Council, in sending convicts, under sentence of transportation, to the island of Mauritius, or its immediate dependencies; as well as to the employment of them at the place to which they may be transported; and the removal of them to any other place, if there should be occasion for it."

or at any other period when the same may be required by the nizamut adawlut, shall transmit to that court a list of the convicts in their respective jails, who may have been sentenced to transportation beyond sea, or to banishment from the district in which the offenders may have resided, under each of the two preceding clauses ; specifying in such lists the names, ages, crimes, and sentences of the several convicts ; and in the list of those sentenced to banishment, the district in which they may have usually resided, before they were brought to trial.' *Fifth.* The court of nizamut adawlut, after receiving the lists required by the foregoing clause, will issue the necessary directions for conveying to the jail of the 24-Pergunnahs the convicts sentenced to transportation beyond sea, when the state of that jail may admit of their being received ; or an opportunity may offer for transporting them ; and will also give the requisite instructions concerning the removal of the convicts under a sentence of banishment.\* The court of nizamut adawlut is further declared competent, as heretofore, under the discretion allowed by the Mohummudan law, to order the removal of all convicts, under sentence of imprisonment, to any jail or district, within the Company's possessions, in which it may be thought proper to keep or employ them, during the period of their respective sentences, although no specific sentence of banishment may have been passed against them, under Clause Third, of this section. But no such removal shall take place without the special order of the court of nizamut adawlut."

To what jail, and when, convicts sentenced to transportation beyond sea, are to be conveyed.

Court of nizamut adawlut may order the removal of all convicts under sentence of imprisonment, to any jail, or district, within the Company's possessions.

The following rules were enacted by Section 9, Regulation 53, 1803, for the punishment of convicts who may effect their escape during the period of their sentences ; or, if transported, may return without permission from the place of their transportation to any parts of the Company's territory under the presidency of Bengal. "*First.* Section 5, Regulation 2, 1799, and Section 22, Regulation 8, 1803, are hereby rescinded. Any convicts sentenced to imprisonment by the courts of circuit, or by the court of nizamut adawlut, who, during the period of their sentences, may escape from jail, or other place of confinement ; or from the roads, or any other place where they may be employed ; and who may be re-apprehended ; shall be brought to trial before the courts of circuit, for such escape ; as well as for any acts of violence, or aggravating circumstances attending their escape ; or for any violent acts done in an attempt to escape ; and, on conviction, they shall be liable to such further punishment, in addition to their former sentences, as may be adjudged against them, on consideration of the circumstances of the case, under the provisions contained in this regulation.' *Second.* Any convict, under sentence of transportation for life, who may be transported to any place beyond sea, after the promulgation of this regulation, and shall escape from such place of transportation, and return, without permission, to Bengal, or to any part of the Company's territory under the presidency of Bengal, shall,

Rules enacted by R. 53, 1803, § 9, for the punishment of convicts who may effect their escape during the period of their sentences : or, if transported, may return, without permission, to any part of the Company's territory under the Bengal presidency.

\* The zillah and city magistrates have been furnished by the nizamut adawlut with forms of the lists of convicts under sentence of transportation, which are required by this clause ; as well as with specific instructions for the transfer of convicts sentenced to transportation or banishment. Vide printed *Circular Orders of the Court of Nizamut Adawlut* ; under the head of *Prisoners C.*

† The convicts referred to are now sent to the jail at Allypore, under the superintendence of the magistrate of the suburbs of Calcutta. See the *Circular Orders of the Niz. Adawlut*, under the head mentioned in the last note.

‡ If the escape, or attempt to escape, be not accompanied with violence, involving death, wounding, or other severe personal injury, the prisoner may be tried and punished by the magistrate, under the provisions of Section 5, Regulation '2, 1818, cited in the next section.



on conviction thereof, to the satisfaction of the nizamat adawlut, and if no circumstances appear to that court to render such convict an object of mercy, be adjudged to suffer death."

Concluding remark. Provisions in R. 51, 1803, R. 4, 1804, and R. 9, 1804, to prevent a retrospective operation of the modifications of the Mohummudan law, excepting such as are favorable to the prisoner.

The same principle adopted in subsequent regulations for annexations of territory to particular districts, in the ceded and conquered provinces.

The foregoing are the whole of the modifications of, or additions to, the Mohummudan criminal law, made by the existing regulations of the British Government, which it appears requisite to specify in this section. But it may be proper to add that, under the provisions of Regulation 51, 1803, relative to trials depending in the ceded provinces, when the regulations for criminal justice, passed on the 24th March, 1803, were ordered to take effect in those provinces; the provisions of Regulation 9, 1804, for the administration of criminal justice in the conquered provinces of the Doab, and on the right bank of river Jumna, as well as in the ceded territory of Bundelcund; and the provisions of Regulation 4, 1804, for the administration of justice in criminal cases in Cuttack; the courts of judicature were restricted from giving any retrospective operation to the stated modifications of the Mohummudan law in those territories respectively; excepting such as direct a commutation of the punishment of amputation to imprisonment; or are otherwise favorable to the prisoner. The same principle was adopted in Regulation 12, 1806, "for annexing the pergunnahs of Sonk, Sonsa, and Sahar, to the jurisdiction of the zillah of Agra;" in Regulation 22, 1812, for annexing to the zillah of Bundelcund "certain lands formerly composing a part of the jageer of the killadar of Calenger;" in Regulation 18, 1816, "for annexing to the zillah of Allahabad the pergunnah of Handya;" and in Regulation 2, 1818, "for annexing to the zillah of Bundelcund the elakeh of Khundeh, appertaining to the pergunnah of Mahoba, together with certain villages belonging to the pergunnah of Choorkee, on the right bank of the Jumna."

## SECTION III.

### MAGISTRATES AND CRIMINAL COURTS.

THE subjects of this section will be comprised under the following heads :—  
 1. Magistrates (including joint and assistant magistrates) and their assistants.  
 2. Courts of circuit. 3. Court of nizamat adawlut. 4. Special rules for trials by courts martial ; for the trial of persons charged with crimes against the state ; for the trial of crimes and misdemeanors charged against the hill people of Rajmahl and Boglepore ; for the trial of persons charged with heinous offences in Kumaon, and other tracts of territory ceded by the Rajah of Nepaul ; and for the trial of certain offences by natives, within the limits of the foreign settlements of Chandernagore and Chinsurah.

Subjects of this section, under what heads comprised

#### *Magistrates and their Assistants.*

By Sections 2 and 3, of Regulation 9, 1793, (extended to Benares by Sections 2 and 3, of Regulation 16, 1795, and re-enacted for the ceded provinces in Sections 2 and 3, of Regulation 6, 1803) the several zillah and city judges were constituted magistrates of the zillahs and cities in which they are respectively stationed ; with a provision that their local jurisdictions, as magistrates, should be the same as that of the zillah or city civil court. But in some instances it was found expedient to appoint a distinct officer to execute the duty of magistrate. It was also (as stated in the preamble to Regulation 16, 1810) "considered advisable to vest the magistrates of certain zillahs with concurrent authority in contiguous, or other jurisdictions, as joint magistrates, for the purpose of giving effect to the measures adopted for the discovery and apprehension of robbers, and other public offenders." It was likewise expected (as noticed in the same preamble) "that in particular districts the police might be improved, and the discharge of the general duties of the office of magistrate essentially promoted, by the occasional appointment of an assistant magistrate." The following rules were therefore enacted in Sections 2 to 12 of the regulation abovementioned :—

§ 2. "First. Such part of Sections 2 and 3, Regulation 9, 1793, Sections 2 and 3, Regulation 16, 1795, and Sections 2 and 3, Regulation 6, 1803, or of any other regulation in force, whereby it is enacted that the judges of the

Original constitution and jurisdiction of zillah and city magistrates, under Regulations 9, 1793, 16, 1795, and 6, 1803.

Reasons for alterations provided for in Regulation 16 1810.

Section 2  
Parts of  
R. 9, 1793,  
R. 16, 1795,

and R. 6, 1803, rescinded. Governor General in Council, may appoint any person to the office of zillah or city magistrate. And may direct whether the judge of the civil court shall exercise concurrent authority, as joint magistrate. Foregoing provision applicable to superintendents of police.

Section 3. Concurrent jurisdiction vested in magistrates, by existing regulations.

Further provision for investing them with general concurrent authority.

Section 4. Rule for appointment of an assistant magistrate, when necessary.

Section 5. Oath to be taken by assistant magistrates.

Section 6. By what regulations, magistrates, joint

civil courts, in the several zillahs and cities, shall hold the office of magistrate of the zillah, or city, under their respective jurisdictions; and that the special jurisdiction of the several magistrates shall extend throughout the districts and places included in, or annexed to, the zillah or city, in which they are respectively stationed; is hereby declared to have been and to be subject to the following modification. *Second.* Whenever it is considered expedient to appoint a person, not being the judge of the civil court of any zillah, or city, to hold the office of magistrate in such zillah or city, or in any part thereof, the Governor General in Council will, as heretofore, make such distinct appointment to the office of magistrate; and direct whether the judge of the civil court shall, or shall not, exercise a concurrent authority as joint magistrate. *Third.* The foregoing provision shall be considered applicable to the superintendent of police for the divisions of Calcutta, Dacca, Moorshedabad, and Patna, and to the superintendent of police for the divisions of Benares and Bareilly, whenever the Governor General in Council may deem it advisable to invest either of those officers with the office of magistrate in any zillah or city, or in any part thereof." § 3. "A concurrent jurisdiction is vested in the several zillah and city magistrates, and their police officers, in certain cases, by Section 16, Regulation 22, 1793; Section 15, Regulation 17, 1795; and Section 16, Regulation 35, 1803." It is hereby further declared, that the Governor General in Council, whenever he may deem it advisable, will, as heretofore, invest the magistrate of any zillah or city, with a general concurrent authority, as joint magistrate, in any contiguous or other jurisdiction or jurisdictions; or in any part thereof." § 4. "Whenever it may appear necessary for the dispatch of public business, or for any purpose of police, or otherwise, to appoint an assistant magistrate, in any zillah or city, or in any part thereof, it shall be competent to the Governor General in Council to make such appointment under the provisions contained in this regulation." § 5. "All persons appointed to perform the duties of assistant magistrate, under this regulation, shall, previously to entering upon the execution of such duties, take and subscribe the oath prescribed by the regulations in force, for the office of magistrate, (with such verbal alterations only as may be consonant to the nature of the appointment,) before the Governor General in Council, or any court, or officer, whom he may commission to administer it." § 6. "Any person appointed to the exclusive charge of the office of zillah, or city, magistrate, under Section 2, of this regulation, will of course be guided by the regulations in force for the discharge of the

<sup>1</sup> These sections authorized the magistrates and their local police officers to pursue offenders, who, after committing crimes in their respective jurisdictions, might abscond into any other jurisdiction; or who might be resident within their jurisdictions at the time of a criminal charge being preferred against them, and escape into another jurisdiction. The rules adverted to, as far as they respect the police officers, have however been rescinded by R. 20, 1817, § 2; and re-enacted, with further provisions, in Section 22, of that regulation. See the next section, *On the Police*.

<sup>2</sup> The form of oath prescribed to be taken by the magistrates before the Governor General in Council, or any person whom he may commission to administer it, is as follows: "I, A. B. appointed magistrate of the zillah (or city) of \_\_\_\_\_, solemnly swear, that I will to the best of my ability preserve the peace of the zillah (or city) over which my authority extends; that I will act with impartiality and integrity, and will not exact or receive, nor knowingly allow any other person to exact or receive, directly or indirectly, any fee, reward or emolument whatsoever, in the execution of, or on account of, any matter relating to the duties of my office, excepting such as the orders of the Governor General in Council do or may expressly authorize; and that I will perform the duties of my office according to the best of my knowledge, abilities, and judgment, conformably to the regulations that have been or may be passed by the Governor General in Council. SO HELP ME GOD."

duties of that office. Persons appointed to the office of joint magistrate, or that of assistant magistrate, shall also be guided by the general regulations, as far as the same may be applicable to their respective duties; and for the due execution of such duties, are hereby declared to be invested with the same powers, as by the regulations are vested in the zillah and city magistrates." § 7. "The special duties to be performed by joint and assistant magistrates, under the powers vested in them by the preceding section, and the regulations therein referred to, will be determined by the orders of Government on their respective appointments. But in all matters relating to practice and form, as well as in all points not specifically provided for by this, or any other regulation, the joint and assistant magistrates shall be guided by the instructions of the court of nizamat adawlut." § 8. "All process issued by a joint, or assistant magistrate, shall be under his official seal and signature; and shall be executed by the officers employed under the joint, or assistant magistrate, or by those of the zillah or city magistrate, as circumstances may direct; and may appear most conducive to the public service. The several zillah and city magistrates, their police officers, and all other persons acting under them, are required to aid and support the joint and assistant magistrates, who may be appointed under the provisions of this regulation, in the execution of any process issued by them, under their official seals and signatures; and resistance to any process so issued is hereby declared to be punishable, in like manner as provided by the regulations, for resistance to the process of a zillah or city magistrate." § 9. "Assistant magistrates, (when not acting as magistrates, in the absence of the zillah or city magistrate,) shall be considered subordinate to the latter, in the general discharge of their official duties, as far as may be consistent with the provisions contained in this regulation. In all cases of a difference of opinion between the zillah or city magistrate, and an assistant magistrate, the latter shall conform to the directions of the former, until a reference can be made to the court of circuit, court of nizamat adawlut, or Governor General in Council, (according to the circumstances of the case) for a determination upon the subject. But it is not intended that any appeal should lie to the magistrate from the sentences of an assistant magistrate, whether for punishment, or acquittal; or from the orders of an assistant magistrate for the commitment of prisoners or holding them to bail to take their trial before the court of circuit; the assistant magistrate being vested with the full powers of magistrate in all such cases, within his jurisdiction; and his proceedings therefore being open to the regular control of the courts of circuit, and court of nizamat adawlut." § 10. "Assistant magistrates, when not stationed at the same place with the zillah or city magistrate, are authorized, in all cases requiring dispatch, to correspond directly with the Governor General in Council, the court of nizamat adawlut, the courts of circuit, or other public authorities. But all monthly and other periodical reports, or accounts, which may be required from an assistant magistrate, by the regulations, or by the orders of Government, or court of nizamat adawlut, and generally all official communications which an assistant magistrate may have to make to any superior authority, and which may not require immediate dispatch, without passing through the zillah, or city magistrate, shall be transmitted through the channel of the latter, provided he be not absent from his jurisdiction." § 11. The police and other establishments of native officers, employed under a zillah or city magistrate, and not ordered to be placed under the immediate authority of a joint, or assistant magistrate, will continue under the usual control of the zillah or city magistrate. But all native officers, so employed, are directed to furnish any joint or assistant magistrate, having authority over them under

magistrates and assistant magistrates, to be guided

Section 7  
Special duties of joint and assistant magistrates to be determined by the orders of Government on their appointment  
In what cases to be guided by the instructions of the court of nizamat adawlut  
Section 8

Process of joint or assistant magistrate under what seal, and in what manner to be issued  
Aid and support to be given by the zillah and city magistrates, and their officers, in the execution of such process  
Resistance to such process how punishable  
Section 9  
How far assistant magistrates to be considered subordinate to magistrates in the general discharge of their duties

Section 10  
In what cases assistant magistrates may correspond directly with Governor General in Council, nizamat adawlut, courts of circuit and other authorities

Section 11  
Police and other establishments of native officers to continue under control of the zillah or city magistrate, when not placed under immediate authority of a joint, or assistant magistrate

But to obey orders of joint and assistant magistrates, and furnish all information required from them.

Governor General in Council may place any of the public establishments under the control of a joint or assistant magistrate. Section 12. Or under the control of the superintendents of police.

this regulation, with every information required from them; as well as generally to obey all orders issued to them by such joint or assistant magistrate, on pain, in case of neglect or failure, of being fined, suspended, or dismissed from office, under the authority, or at the representation, of such joint or assistant magistrate, according to the provisions established by the general regulations for the punishment of offences of that description. The Governor General in Council further reserves to himself a discretion of placing any part of the police, or other public establishments, under the immediate control of a joint or assistant magistrate, when it may appear expedient." § 12. The provision contained in the preceding section shall likewise be considered applicable to all cases in which the Governor General in Council may deem it expedient to place any of the police, or other public establishments, under the immediate control of the superintendent of police for the divisions of Calcutta, Dacca, Moorshedabad, and Patna, or the superintendent of police for the divisions of Benares and Bareilly, who by Regulations 10, 1808, and 8, 1810, possesses a concurrent jurisdiction, with the several magistrates, in the zillahs and cities of the above divisions respectively.<sup>1</sup>

What persons amenable to the authority of the zillah and city magistrates, and courts of circuit.

R. 22, 1793, § 16, re-enacted for Benares, by R. 17, 1793, § 15; and for ceded provinces by R. 35, 1803, § 16. R. 2, 1796, § 2; re-enacted for ceded provinces by R. 6, 1803, § 19.

Special provisions in R. 5, 1809, for native subjects of the British Government, committing offences without the limits of the Company's provinces.

Section 2. How magistrates are to proceed against native subjects found within their jurisdiction in cases of serious offences committed without the limits of the British provinces.

All native subjects of the British Government, as well as all other persons, not being European British subjects, are amenable, for crimes and misdemeanors committed by them, within the limits of the East India Company's territorial possessions, under the presidency of Fort William, and without the boundaries of the town of Calcutta and parts adjacent, forming the local jurisdiction of his Majesty's supreme court of judicature, to the authority of the zillah or city magistrate, and court of circuit, in whose jurisdiction the crime or misdemeanor may have been committed by them; or in which they may reside, or be found, when the charge is preferred against them. Native subjects of the British Government, who may be charged with crimes or misdemeanors committed in places out of the limits of the British provinces, are also declared amenable to the magistrates and criminal courts, in certain cases, under the following special provisions of Regulation 5, 1809.

§ 2. "*First.* Whenever a native subject of the British Government shall be charged with murder or homicide of any sort, rape, or other great personal violence, robbery, burning of houses, or violent affrays, or any other serious offence, committed in any place out of the limits of the British provinces; either against the subjects of the British Government, or any other persons; and shall be found in any part of such provinces; the magistrate of the city or zillah, in whose jurisdiction the accused person may be found, on the charge against him being deposed to on oath, or under a solemn declaration, either by the complainant, or by some other credible person, as required by Section 4, Regulation 9, 1807, shall issue process for apprehending or summoning the party accused, under the provisions of that regulation; and, on his attendance, shall make such inquiry into the charge, as the circumstances of the case, and the evidence attainable may admit of; after which he shall report his proceedings to the Governor General in Council. *Second.* In such cases the magistrate shall commit the prisoner, or hold him to bail, according as the nature of the charge in ordinary cases would require; in cases of commitment the form shall specify until the orders of Government shall be received, and in cases of bail, the form of the bail bond shall be in the first instance to appear before the magistrate on a certain day assigned (leaving time for the receipt of the orders of Government) and on such subsequent days as the magistrate shall require. Should Government in the latter case direct the accused to be brought to trial, the magistrate shall cause

<sup>1</sup> The powers and duties of the superintendents of police, with the rules here noticed, will be specified in the next section.

the bail bond to be renewed in the ordinary form to appear and take his trial at the court appointed for that purpose." § 3. "In cases referred under the preceding section, as well as in all cases of the like nature, which may, in any manner, come before the Governor General in Council, if it appear proper that the prisoner should be brought to trial for the offence imputed to him; the Governor General in Council shall be competent to direct that the prisoner be brought to trial before any of the established courts of criminal judicature within the British provinces, which he may be pleased to appoint: and the special order of the Governor General in Council for the purpose shall be deemed full and sufficient authority for the trial and punishment of such prisoner by the court so appointed; as well as by the court of nizamat adawlut, if the case be referrible, under the regulations in force, to that court." § 4. "Whenever a native subject of the British Government shall be brought to trial before any of the established courts of criminal judicature under the provisions of this regulation, the trial shall be conducted, and sentence thereupon passed and carried into execution, under the general regulations in force, in like manner as if the offence had been committed within the British territories, and the case subject to the ordinary jurisdiction of those courts."

Section 3.  
Governor General in Council competent to direct such persons to be brought to trial before any of the established criminal courts.

Section 4.  
Such trials to be conducted, and sentences passed in conformity with the general regulations for the trial of offences in ordinary cases. Additional rule, in Section 2, Regulation 8, 1813.

Doubts having arisen respecting the construction which should be attached to the words "Native Subjects of the British Government," employed in the above regulation; and it appearing essential to the ends of justice that the provisions of it should be extended to certain other classes of persons; the following additional rule was enacted in Section 2, Regulation 8, 1813.—

"The provisions contained in Regulation 5, 1809, for the punishment of crimes committed beyond the British territories in India, shall be considered applicable to the three following classes of persons, and to no other. *First.* Natural born subjects of the British Government in India. *Second.* Natives of India, who may have become subjects of the British Government in India, by the conquest or cession of the places in which they were born, for acts done by them subsequently to the period of such conquest or cession. *Third.* Natives of the foreign states of India, in the civil or military service of the British Government in India, while actually in such service, and during six months after they shall have quitted the British territories; or, (supposing them to be stationed out of the limits of the British territories) after they shall have quitted the service: Provided however, that nothing contained in this regulation shall be construed to authorize any of the established courts in the British provinces to take cognizance of any charge against a native military officer, sepoy, trooper, or other person, for which he may have been already tried by a court martial, under the 5th Article of the 15th Section of the Rules and Articles of War."

To what classes of persons the provisions of Regulation 5, 1809, are considered applicable.

In what case the established courts are restricted from taking cognizance of any charge against a native military officer, sepoy, trooper, or other person.

European British subjects, resident in the territories subject to the presidency of Fort William, before the enactments of the Statute 53, Geo. III. cap. 155, cited in page 30 of this volume, were amenable only to the supreme court of judicature at Calcutta, for all acts of a criminal nature. By the 105th section of the Statute above-mentioned, any British subject, residing without the town of Calcutta, is declared subject to the authority of the local magistrate, on complaint by a native of India, of "any assault, forcible entry, or other injury, accompanied with force, (not being felony) alleged to have been done to his person, or property;" and on conviction, the magistrate is empowered "to inflict upon such person a suitable punishment by fine, not exceeding five hundred rupees;" as well as to levy the same, if not paid, by distraint and imprisonment; as more fully stated in the section above cited. But for other crimes and misdemeanors, European British subjects, wheresoever resident, within the jurisdiction of his Majesty's court at Cal-

European British subjects to what court amenable for acts of a criminal nature. Provision made by Statute 53, Geo. III. cap. 155. § 105, for cases of assault, forcible entry, or other injury, accompanied with force, not being felony, upon the person or property of a native of India.

Provisions of Statute 33, Geo. III. cap. 52, § 151, for appointment of the Company's servants, or other British inhabitants, to act as justices of the peace, within the provinces

Qualification required by Section 152 of the same statute.

Modification of the last mentioned section in Section 112, of the Statute 53, Geo. III. cap. 135

Resolution of the Governor General in Council, passed on the 27th January, 1794, and cited in the preamble to Regulation 2, 1796

Rules and regulations on the subject of the ceded provinces

cutta, are subject to trial and punishment by that court only. It was therefore provided, by Section 151, of the Statute 33 Geo. III. cap. 52, (cited, by mistake, as the Act of 21 Geo. III. cap. 65, in the preamble to Regulation 2, 1796,) "that it shall and may be lawful to and for the Governor General in Council of Fort William, in Bengal, for the time being, by commissions to be from time to time issued under the seal of the supreme court of judicature there, in the name of the King's Majesty, his heirs, and successors, tested in the name of the chief justice of the said court, to nominate and appoint such and so many of the covenanted servants of the said Company, or other British inhabitants, as the said Governor General in Council shall think properly qualified, to act as justices of the peace, within and for the said provinces, &c. and such persons shall, according to the tenor of the respective commissions, wherein they shall be so nominated and appointed, and by virtue thereof, and of this Act, have full power and authority to act as justices of the peace, according to the tenor of the same commissions," &c.—It was, at the same time, provided in Section 152 of the statute above noticed, "that no person to be nominated and appointed in and by any such commission as aforesaid, shall be capable of acting as a justice of the peace in any of the said provinces or presidencies, until he shall have taken and subscribed, in the court of oyer and terminer of the province or presidency for which he shall be appointed to act as a justice of the peace, the like oaths as are appointed to be taken by justices of the peace in Great Britain, or as nearly to the tenor thereof as the case will admit, and as shall be approved by the said court." This provision, in consequence of the great inconvenience attending it, from requiring persons stationed at a distance from the presidency, to attend and take the prescribed oaths in the court of oyer and terminer at the presidency, has been modified by Section 112 of the Statute 53, Geo. III. cap. 155, which enacts, "that all persons who shall be nominated and appointed in any such commissions of the peace as are mentioned in the Act 33, Geo. III. cap. 52, shall be capable of acting as justices of the peace in every respect, according to the tenor of such commissions, upon taking and subscribing, in any civil or criminal court of justice, within the provinces, in and for which any such commission shall have issued, before any other justice of the peace, the like oaths as are appointed by the said act to be taken in the court of oyer and terminer of the province or presidency for which such persons shall be appointed to act as justices of the peace; and the subscription of such persons to the said oaths shall be deposited and kept with the records of the courts of justice in which the said oaths shall have been administered." But on the 27th January, 1794, soon after the receipt of the Statute 33, Geo. III. cap. 52, (which was passed on the 11th June, 1793,) among other resolutions of the Governor General in Council, in pursuance of that Act, it was resolved, "That for the purpose of investing the magistrates of the several zillahs, and cities, with legal authority to apprehend and send to Calcutta, Europeans who may offend against the peace, they be respectively appointed justices of the peace, according to the act above cited, within their several jurisdictions as now or hereafter constituted, and that they be named in the warrant to be issued to the judges of the supreme court accordingly; but, as it would be expensive and inconvenient to require them all to repair immediately to Calcutta, to take the prescribed oath of qualification, that they be directed to take this oath as they may hereafter occasionally visit the presidency; and in the mean time be apprized that their execution of the functions of a justice of the peace must remain suspended, agreeably to the restriction to this effect in the 152d clause of the act above noticed." Rules, were, at the same time, enacted in Regulation 2, 1796, (and re-enacted for the ceded provinces in Section 19, of Regulation 6, 1803,) for

the guidance of the magistrates, on the receipt of charges against European British subjects, which might render them liable to a criminal prosecution in the supreme court. These were subsequently modified in Regulation 15, 1806; and the amended rules are still in force, throughout all the provinces, without the limits of Calcutta, to the following effect.—

*First.* If the magistrate, to whom the charge is preferred, shall have taken the oaths of qualification as a justice of the peace, and thereby have become vested with the authority of a justice of the peace, as provided by Act of Parliament, the magistrate, on the charge or information being lodged before him upon oath, is to apprehend the party accused; and, if the evidence against him be sufficient to warrant the same, is to hold him to bail, or commit him to the custody of the Sheriff of Calcutta, for trial before the supreme court, at the ensuing session. He is, at the same time, to bind over the prosecutor to repair to Calcutta before the next session, and to take recognizances from the witnesses for their appearance at the trial. He is further required to transmit the original depositions taken on the occasion, (with translations of any papers not in the English language,) to the clerk of the crown: and to send copies thereof to the secretary to Government in the judicial department, for the information of the Governor General in Council; who, if he consider it necessary, from the aggravated nature of the offence, or any other substantial ground, will order the prosecution to be conducted by the law officers of Government, and at the public expense.

*Secondly.* Whenever an European British subject shall be charged before a zillah or city magistrate, who has not taken the oaths of qualification as a justice of the peace, with a criminal offence, which, according to the law of England, may not be bailable; and the magistrate, after making the necessary inquiry on the subject, shall be of opinion, that there are grounds for bringing the person accused to trial before the supreme court of judicature, he is to send the person accused, under safe custody, to his Majesty's justices of the peace, at the police office in Calcutta, accompanied by the witnesses against the prisoner; with a letter, stating the nature of the case, and requesting that the justices of Calcutta will take the necessary measures for bringing the person accused to trial before the supreme court of judicature. The magistrate, by whom the prisoner may be sent to Calcutta, is, at the same time, to transmit a copy of all the proceedings held on the occasion, (together with translations of any papers not in the English language) to the secretary to Government in the judicial department, to enable the Governor General in Council to determine, whether the prosecution should be undertaken by the law officers of Government, and at the public expense, or otherwise.

*Thirdly.* Whenever any person shall charge an European British subject before a magistrate, who has not taken the oaths of qualification as a justice of the peace, with a bailable offence, it is declared to be the duty of the magistrate to explain to the complainant the course which he should pursue, for the purpose of obtaining redress; that is, by application to the justices of the peace at Calcutta, or to the grand jury. It is likewise required of the magistrate, after calling upon the person accused for his reply to the complaint, to report the case to the Governor General in Council; at the same time stating, on a consideration of the distance at which the parties may reside from the presidency, of the poverty of the complainant or of other circumstances, whether it would, in the opinion of the magistrate, be proper, that the expense of the prosecution should be defrayed by Government. The Governor General in Council, on receipt of such report, will pass such orders on the subject as may appear to him to be advisable; and will direct, in cases which

ges against European British subjects, enacted in R. 2, 1796; (re-enacted for ceded provinces in Section 19. R. 6, 1803,) with amendments in R. 1. 1806. Magistrate how to proceed if he has taken the oaths of qualification as a justice of the peace. R. 2, 1796, & 2. modified by R. 15, 1806.

R. 15, 1806, & 3. What to be done, if the magistrate is not qualified to act as a justice of the peace, and the offence charged be not bailable.

R. 15, 1806, & 5. Magistrates not qualified to act as justices of the peace, how to act if the offence charged be bailable



may appear to require it, that the prosecution shall be conducted by the law officers of the Company.

R. 2, 1796, § 3; re-enacted in R. 6, 1803, § 19, c. 4. Allowance to indigent prosecutors and witnesses unable to pay the charge of their journey to Calcutta.

*Fourthly.* In all cases of inability, of the prosecutor or witnesses, to defray the charge of the journey to Calcutta, the magistrate is authorized to make them the same allowance as he is authorized to make to prosecutors and witnesses in need of such assistance during their attendance on the courts of circuit, viz. a daily allowance of two annas each during their attendance on the supreme court, including the actual period of their journey to and from Calcutta; or sufficient time for their return after their discharge from the court in cases wherein it may appear they have voluntarily protracted their return beyond what was necessary.

Remark on above provisions.

R. 2, 1796, § 6; re-enacted, in R. 6, 1803, § 19, c. 5.

Magistrates required to take oath of qualification within six months after their appointment.

By the provisions above stated every practicable facility is given to obviate, as far as circumstances admit, the ill consequences resulting from British subjects, however remotely situated, being amenable only, for criminal offences, to the supreme court in Calcutta. And as less inconvenience is sustained by prosecutors and witnesses, when the magistrate is empowered to act as justice of the peace, all persons appointed to the station of zillah or city magistrate are required to take the oath of qualification, within six months from the date of their appointment. In particular cases the court of nizamat adawlut may grant an extension of time not exceeding a further period of six months. But no magistrate is to defer taking the prescribed oath, beyond a twelve-month from the date of his appointment, without the sanction of the Governor General in Council.<sup>1</sup>

Primary duty of the zillah and city magistrates, to apprehend offenders; as prescribed in R. 9, 1793, § 4, extended to Benares by R. 16, 1795, § 4; and re-enacted for ceded provinces by R. 6, 1803, § 4. Petty offences cognizable by the magistrates, and how punishable, contained in R. 9, 1793, § 8; and R. 6, 1803, § 8.

The primary duty of the zillah and city magistrates, as prescribed in Section 4, of Regulation 9, 1793, (extended to Benares by Section 4, of Regulation 16, 1795, and re-enacted for the ceded provinces in Section 4, of Regulation 6, 1803) is "to apprehend murderers, robbers, thieves, house-breakers, all disturbers of the peace, and persons charged with crimes and misdemeanors." In the performance of this duty they are assisted by the officers of police; whose functions, as well as those of the magistrates immediately connected with the police department, will be stated in the next section.

By Section 8, Regulation 9, 1793, extended to Benares by Section 4, Regulation 16, 1795, and re-enacted for the ceded provinces by Regulation 6, 1803, Section 8, the magistrates were empowered "to hear and determine, without any reference to the courts of circuit, all complaints or prosecutions brought before them, for petty offences; such as abusive language, calumny, inconsiderable assaults, or affrays; and to punish the offender, when convicted, by committing him to prison for a term not exceeding fifteen days, or by imposing a fine upon him; but the fine in no case to exceed the sum of fifty sicca rupees, unless the offender be a zemindar, independent talookdar, or other actual proprietor of land, paying an annual revenue to Government of more than ten thousand sicca rupees; or a proprietor of ayma land paying a quit revenue to Government exceeding five hundred sicca rupees per annum; or of lakheraj land the annual produce of which may be above one thousand sicca rupees; in which cases the offender is liable to a fine not exceeding two hundred sicca rupees. The magistrate is to fix the amount of the fine, under the limitations prescribed, upon a due consideration of the nature of the case, and the situation and circumstances in life of the offender." The magistrates were likewise authorized by Section 9,

What charges of theft punishable by the

<sup>1</sup> This rule was made before the necessity of attending the supreme court, in Calcutta, to take the oath of qualification, was dispensed with, by the 112th Section of the Statute 53 Geo. III. cap. 155.

Regulation 9, 1793, and Section 9, Regulation 6, 1803, "to hear and determine, without any reference to the courts of circuit, all complaints or prosecutions brought before them for petty thefts, when they shall not have been attended with any aggravating circumstances, or committed by persons of notorious bad character; and to inflict upon the offenders corporal punishment not exceeding thirty rattans, or commit them to prison for a term not longer than one month; according as they may think proper, upon a consideration of the circumstances of the case." If the complaints specified (in Section 8, or 9, abovementioned) should appear to the magistrate, on investigation, to be litigious, vexatious, or groundless, he was further authorized (by Section 10, Regulation 9, 1793, and Section 10, Regulation 6, 1803,) "to punish the complainant, by fine or imprisonment, under the limitations prescribed in Section 8."

magistrates, under R. 9, 1793, § 9; and R. 6, 1803, § 9.

And litigious, vexatious, or groundless charges, how to be punished by them. R. 9, 1793, § 10; and R. 6, 1803, § 10.

With a view to the speedy trial of persons charged with offences not of a heinous nature, and to prevent the necessity of a second attendance of the prosecutors and witnesses in such cases, before the courts of circuit, the powers originally vested in the magistrates, as above stated, were enlarged by Section 19, Regulation 9, 1807; which further empowered the zillah and city magistrates, "in all cases of conviction before them, of any criminal offence punishable under the Mohummudan law, and the regulations, for which the penalties authorized by the sections above quoted may appear insufficient, or to which the rules referred to may not be expressly applicable, and for which a more severe punishment than six months imprisonment, with thirty rattans, or a fine of two hundred rupees, may not have been specifically prescribed, (in which case the prisoner, if there appear grounds for it, must be brought to trial before the court of circuit) to pass sentence of imprisonment, not exceeding six months; with corporal punishment, not exceeding thirty rattans, in cases of theft; or in other cases with a fine, not exceeding two hundred rupees, commutable, if not paid, to a further period of imprisonment, not exceeding six months, in pursuance of Section 3, Regulation 14, 1797, and Section 31, Regulation 6, 1803; so that the entire period of imprisonment, under the sentence of a magistrate, shall, in no instance, exceed one year."<sup>1</sup>

Powers of the magistrates, for speedy trial and punishment of certain offences, enlarged by R. 9, 1807, § 19.

The following additional powers have been vested in the magistrates by Regulation 12, 1818, entitled "A Regulation for extending the powers of the magistrates and joint magistrates in the trial of persons charged with breaking into houses and other places of habitation, or into warehouses or other places used for the custody of property, with an intent to steal; or charged with theft; or with buying or receiving stolen property, knowing the same to have been stolen; or charged with escape from jail or other place of confinement." The preamble to this regulation, which states the reasons that led to its enactment, is as follows:—"Whereas under the existing regulations the magistrates are not empowered to pass any sentence of punishment upon prisoners who may be charged before them with the offence of breaking into, or attempting to break into, houses, tents, boats, or other places of habitation, or into warehouses or other places, used for the custody of property, with an intent to steal, as defined in Section 2, Regulation 1, 1811,

Additional powers vested in the magistrates by R. 12, 1818.

Preamble to that regulation.

<sup>1</sup> The two sections here cited (which have been already noticed as containing a general rule for the guidance of the criminal courts in the imposition of fines) require that no fines be imposed by the magistrate, except for the use of Government; and that wherever any such fine be imposed, the magistrate, weighing all the circumstances of the case, shall fix a definite period of imprisonment, to be held as equivalent to the fine; at the expiration of which the prisoner is to be discharged, although he may not have paid the fine.

or with the offence of receiving or buying stolen goods, knowing the same to be stolen; and whereas much of the time of the judges of circuit is occupied in investigating these, and some other offences, which, from their character, and from the circumstances attending their perpetration, do not very frequently demand any severe or exemplary degree of punishment; and whereas the prosecutors and witnesses in such cases are exposed to great distress and inconvenience in being compelled to attend, not only during the enquiry into such cases before the magistrates, but subsequently during the trial before the court of circuit; and whereas the prisoners themselves, in such cases, are sometimes subjected to a prolonged detention in custody previously to their trial at the sessions; and whereas some of the inconveniences above noticed will be obviated, and the ends of criminal justice will be more promptly and effectually obtained, by investing the magistrates with certain powers with regard to the trial and punishment of persons charged with and convicted of such offences; the following rules have been enacted, to be in force from the date of their promulgation throughout the territories immediately dependant on the presidency of Fort William."

Section 2.  
Rules for the  
guidance of  
magistrates in  
the trial of per-  
sons charged  
with burglary,  
or with an at-  
tempt to com-  
mit that of-  
fence

In cases of bur-  
glary attended  
with acts of  
violence, and  
other circum-  
stances of ag-  
gravation, the  
magistrates to  
commit the of-  
fenders to the  
court of cir-  
cuit

Punishment to  
be awarded by  
courts of cir-  
cuit on such  
offenders when  
convicted.

§ 2. *First.* "The zillah and city magistrates shall be guided by the following rules, whenever individuals may be apprehended and brought before them, on a charge of having committed the offence of breaking into, or attempting to break into, a dwelling house, tent, boat, or other place of habitation, by night or by day, with an intent to steal (but without open violence, such as to constitute the crime of robbery by open violence), or with the offence of breaking into, or attempting to break into any warehouse, store-house, or other building or place used for the custody or preservation of property, either by night or by day, with an intent to steal (but without open violence;) or of being present, aiding and abetting in the commission of any of the offences above specified; or although not present, of having procured or caused the perpetration of any of those offences by hire, counsel, or command; or of having in any manner confederated with the actual perpetrators of them, in pursuance of a pre-concerted plan. *Second.* If the perpetration of any of the offences enumerated in the preceding clause, not amounting to the crime of robbery by open violence, shall be accompanied with murder, or with an attempt to commit murder, or with wounding, burning, corporal injury, or other aggravating act of personal violence; or if the prisoners, or any of the prisoners concerned in the offences described in the preceding clause, shall appear to have been before convicted of burglary, robbery, or other heinous crime; or if the prisoners, or any of them, shall appear to be persons of notoriously bad character, or shall be charged with having committed the offence while employed in the office of watchmen, guards, or police officers, as described in Section 4, Regulation 3, 1805; or if the value or amount of the property stolen, shall exceed the sum of one hundred rupees: in all such cases, it shall be the duty of the magistrate to commit the whole of the prisoners who may appear, from the evidence adduced, to have been concerned in the offence, to take their trial before the court of circuit at the ensuing session. *Third.* In cases of conviction before the court of circuit, of individuals charged with any of the offences above specified, the judge of circuit shall be guided by the rules contained in Section 8, Regulation 17, 1817,<sup>2</sup> referring such cases as may come within the provisions of Clause Second, and Clause Fourth of that section, to the court of nizamat adawlut; and in all other cases not coming within the provisions of those clauses, sentencing the prisoners to suffer such degree of punishment, as on a consideration of all the circum-

<sup>1</sup> See page 327.

<sup>2</sup> Cited in page 328.

stances of the case, may appear adequate to the offence; not exceeding, however, in any instance, thirty-nine stripes of the corah, and imprisonment with hard labor for fourteen years, with or without banishment from the district in which the prisoner may have resided. *Fourth.* If from the investigation held by the magistrate, there shall appear reason to believe, that a prisoner, apprehended and brought before him, has been guilty of any of the offences described in the first clause of this section, but that such offence has not been attended with any of the circumstances of aggravation specified in the second clause of this section, the magistrate shall, in addition to the evidence which may be adduced on the part of the prosecution, take the defence of the prisoner, and the evidence of the witnesses who may be designated by the prisoner in support of his defence, and, after a full and deliberate investigation, shall proceed, without reference to the court of circuit, to pass sentence of acquittal or conviction. *Fifth.* If the prisoners be convicted, the magistrate is hereby empowered to sentence them to imprisonment, with hard labor for a period not exceeding two years, and to corporal punishment not exceeding thirty stripes of the rattan, and to carry such sentence into immediate execution."

§ 3. "*First.* Under the existing regulations, the magistrates are empowered to sentence prisoners convicted before them of theft, to imprisonment for a period not exceeding six months, with corporal punishment not exceeding thirty rattans; and in cases appearing to them to demand a more severe punishment, they are required to commit the prisoners for trial before the court of circuit.—The following rules are now enacted, for extending the powers of the magistrates in the punishment of prisoners convicted of theft, and for defining the cases which are to be cognizable respectively by the magistrates, and by the courts of circuit. *Second.* In all cases of theft, whether in a house, warehouse, or other place, or from the person of another (not coming within the provisions of the regulations in force for the punishment of robbery by open violence, or the provisions of Clause First, Section 2, of this Regulation,) if the theft, or the attempt to commit the same, shall have been accompanied with murder, or with an attempt to commit murder; or with wounding, burning, severe corporal injury, or other aggravating act of personal violence; it shall be the duty of the magistrate to commit the whole of the prisoners, who may appear, from the evidence adduced, to have been concerned, either as principals or accomplices, in the offence, to take their trial before the court of circuit at the ensuing session.—The magistrate shall also exercise his discretion in committing for trial, before the court of circuit, any prisoners charged with theft (although not attended with the aggravating circumstances abovementioned,) who from their notoriously bad character, or from their having been before convicted of a heinous offence, or from any other peculiar circumstances of the case, may appear to him deserving of a severer punishment than the magistrate is authorized to inflict under the following clauses of this section.' Such persons, if convicted on trial before the court of circuit, will be liable to the penalties prescribed for the offences in question by the 2d, 4th, 5th and 7th clauses of Section 8, Regulation 17, 1817. *Third.* With exception to the cases abovementioned, the magistrates shall hear and determine, without reference to the courts of circuit, all other cases of theft; and after having duly considered

Magistrates empowered to take cognizance of burglaries, unattended with the aggravating circumstances noticed in Clause Second.

Punishment which the magistrates may inflict on offenders convicted of burglary before them.

Section 3. Rules for extending the powers of magistrates in the punishment of persons convicted of theft, and defining cases cognizable respectively by magistrates and courts of circuit. Thefts in which the offenders must be committed for trial before the court of circuit.

Discretion vested in magistrates in committing prisoners accused of theft for trial, although not charged with using personal violence. Penalties to which such persons are liable on conviction before the court of circuit. Magistrates to try and decide in all other cases of theft.

<sup>1</sup> By Section 4, Regulation 4, 1820, it is declared, in amendment of the clause here cited, "that in cases of theft, where the amount or value stolen shall exceed the sum of three hundred rupees, the amount shall be deemed a circumstance taking the case out of the magistrate's jurisdiction, as to passing sentence on the accused; and shall make it necessary for him to commit the accused for trial to the court of circuit."

Punishment to which prisoners are declared liable in cases of theft cognizable by magistrates, if attended with aggravating circumstances.

Magistrate to refer other cases of theft to his assistant, or investigate them himself.

Section 4  
Parts of R. 1, 1811, rescinded and rules enacted for guidance of magistrates in investigating charges against receivers of stolen property.  
Purchasers or receivers of stolen property, obtained under aggravating circumstances, to be tried before the court of circuit.  
Punishment on conviction.

Notorious offenders and common receivers of stolen property, obtained without violence, may be also tried before the court of circuit.

the evidence which may be adduced on the part of the prosecution and of the prisoner, shall pass sentence of acquittal or conviction. *Fourth.* In cases of theft cognizable by the magistrate under the foregoing rules, if the amount or value of the property stolen shall exceed fifty rupees, or if the persons committing the theft shall have been before convicted of theft, burglary, robbery, or other heinous offence; or if the prisoner shall have committed the offence while employed in the office of watchman, guard, or police officer, as described in Section 4, Regulation 3, 1805; or be a servant of the person from whom the property may have been stolen, or a servant employed in the house in which the theft may have been committed; as well as in all cases of cattle stealing; the magistrate shall be empowered, on proof of the guilt of the prisoner, to sentence him to imprisonment with hard labor for such period as may appear proper, not exceeding two years, and to corporal punishment, not exceeding thirty stripes with a rattan. *Fifth.* In other cases of theft, not included in the foregoing provisions, the magistrate shall either refer the case for decision to his assistant, under the powers vested in the assistant to the magistrate, by the regulations in force; or shall proceed to investigate them himself, and to pass sentence on the prisoners under the powers vested in him by Section 19, Regulation 9, 1807."

§ 4. "*First.* The provisions contained in Sections 7 and 8, Regulation 1, 1811, for the punishment of persons convicted of receiving or buying stolen or plundered property, knowing the same to have been stolen or plundered, are hereby rescinded; and the magistrate shall be guided by the following rules in the investigation of charges preferred against individuals for the offence of receiving or buying stolen goods, cattle, jewels, money, or effects of whatever description, knowing the same to have been stolen. *Second.* All prisoners who may appear to the magistrate, from the investigation held by him, to be guilty of having purchased or received plundered or stolen property, of any description, knowing at the time of his purchasing, or receiving the same, that such property had been obtained in the perpetration of robbery by open violence, or of theft accompanied with any of the aggravating circumstances described in the second clause of Section 2, or the second clause of Section 3, of this regulation, shall be committed by the magistrate to take their trial before the court of circuit; and such persons, if convicted before the court of circuit, of the offence of receiving or buying plundered or stolen goods, cattle, jewels, money, or effects of whatever description, knowing at the time that such property had been obtained by robbery, or by theft accompanied with any of the aggravating circumstances described in the second clause of Section 2, or the second clause of Section 3, of this regulation, shall be sentenced by the judge of circuit, according to the circumstances of the case, to such period of imprisonment as may appear proper; in no instance, however, exceeding fourteen years; and to corporal punishment, not exceeding thirty-nine stripes of the corah. *Third.* The magistrate shall also be empowered to commit for trial to the court of circuit any prisoner charged with the offence of buying or receiving stolen property of whatever description, knowing at the time that such property had been stolen, although the property may not have been obtained in the perpetration of theft, accompanied by any of the aggravating circumstances described in the second clause of Section 2, and the second clause of Section 3, of this regulation, provided that the prisoner shall have been before convicted of the offence of buying or receiving stolen property, or of robbery, burglary, theft, or other heinous crime; or that the prisoner shall appear to be an habitual and professional receiver of stolen property; or a person of notoriously bad character; and such person shall, upon being duly convicted before the court of circuit, be liable to such punishment, within the limitations prescribed in the preceding clause of this section, as the

court of circuit may judge proper to direct, on a consideration of all the circumstances of the case. *Fourth.* With exception to the cases abovementioned, the magistrate shall hear and determine, without reference to the court of circuit, all other cases in which individuals may be charged with the offence of buying or receiving stolen property of whatever description, knowing it at the time to have been stolen, or with the offence of having in their possession property obtained by theft or robbery, and knowing at a period of time, subsequently to its first coming into their possession, that such property had been so obtained, notwithstanding which they may have kept the stolen property in their possession without restoring it to the owner, or giving information to the local police officer or magistrate.—In such cases the magistrate, after having duly considered the evidence in support of the prosecution, the defence of the prisoners, and the evidence of the witnesses designated by the prisoners, shall proceed to pass sentence of conviction or acquittal. If the prisoners be convicted, the magistrate is hereby empowered to sentence them to imprisonment with hard labor, for a period not exceeding in any case two years, and to corporal punishment, not exceeding thirty stripes of the rattan. *Fifth.* It is hereby explained, that persons charged with the offences specified in the preceding clauses of this section may be brought to trial and sentenced to punishment, although the actual perpetrators of the theft or robbery may not have been convicted; provided however, that the fact, of the theft or robbery having been committed, be established, and it be proved that the purchaser or receiver knew that the property in question had been obtained by theft or robbery.”

§ 5. “*First.* The cases of convicts, or of prisoners ordered to be confined till they give security for good behaviour, who may effect their escape while under sentence, or order of imprisonment, from a jail, or other place of confinement, or from the custody of their guards, shall be cognizable by the magistrate; and upon conviction, the magistrate shall be empowered to sentence the offenders to corporal punishment, not exceeding thirty stripes with a rattan, and (if sentenced to a limited period of imprisonment) to suffer such further period of imprisonment beyond the unexpired term of their original sentence, as he may judge proper; provided, however, that such additional imprisonment shall in no case, exceed the period of two years. If the prisoner be in confinement under an order to find security for good behaviour, he may be sentenced to imprisonment for a specific term, not exceeding two years. *Second.* The cases of prisoners apprehended and detained in custody, under examination on charges of a criminal nature; but not admitted to bail, who may effect their escape from a jail or other place of confinement, or from the custody of their guards, shall also be cognizable by the magistrates; and such prisoners being duly convicted of the offence in question, shall be liable to a sentence of imprisonment, in no case exceeding six months. *Third.* The rules contained in the two preceding clauses shall not, however, be considered applicable to the cases of convicts, or other prisoners, who, in effecting their escape, or in attempting to effect their escape, shall be guilty of such a degree of violence towards their guards or other individuals, as may in its consequences involve the death, wounding, or severe personal injury, of any person or persons. In all cases of that nature, it shall be the duty of the magistrate to commit the offender to take his trial before the court of circuit.”

The provisions of Regulation 7, 1819, “for declaring certain misdemeanors punishable by the magistrates; and for defining the punishment to be adjudged in such cases,” may likewise be stated, in this place, with the following preamble to that regulation. “It has been represented to Government, that in some parts of the country, and especially in cities and large

Magistrates empowered to hear and decide all other cases in which prisoners may be charged with buying or receiving stolen property.

Magistrates how to proceed in such cases.

Receivers may be tried, and punished, although the actual thief or robber may not have been convicted. Provide.

Section 5. Convicts, or prisoners confined for security, effecting their escape, to be tried and sentenced by the magistrate. Punishment on conviction.

Provide.

Prisoners escaping from confinement, while under examination, to be tried and sentenced by the magistrate.

The foregoing rules inapplicable to convicts, who, in escaping, may be guilty of acts of violence towards personal violence.

Magistrates how to proceed in such cases.

Provisions of R. 7, 1819; declaring certain misdemeanors punishable by the magistrates. Preamble to

that regulation.

towns, the peace and happiness of families are often destroyed by evil disposed persons, chiefly women, who are employed to entice and take away the wives, or female children, of the fixed inhabitants, from their respective houses, for the purpose of rendering them prostitutes, or concubines; or of otherwise unlawfully disposing of them, to their serious detriment, and to the injury of their husbands and parents. It has also been stated that great distress to women and children is frequently occasioned by husbands and fathers deserting their families, and neglecting to provide for their support, although possessing the means of maintaining them; as well as from a similar neglect by the fathers of illegitimate offspring, in neither providing for the support of such offspring, or their mothers. The speedy cognizance and punishment of such misdemeanors by the zillah and city magistrates, and joint magistrates, subject to the regular control of the courts of circuit, appear to be the most efficient means of preventing, or checking, the culpable practices above described. It is further judged expedient to empower the magistrates and joint magistrates to take cognizance of certain misdemeanors committed by workmen, and domestic servants, in cases not expressly provided for by any existing regulation; at the same time maintaining the just claims of workmen and servants upon their respective employers. The Governor General in Council has accordingly enacted the following rules, to be in force as soon as promulgated throughout the provinces immediately subject to the presidency of Fort William."

Section 2.  
Magistrates  
how to punish  
persons guilty  
of enticing, or  
of causing to  
be enticed  
from their  
homes, married or unmarried females  
for illegal pur-

§ 2. "If any person amenable to the jurisdiction of the zillah and city courts shall be convicted before a zillah or city magistrate, or joint magistrate, of the offence of enticing and taking away, or causing to be enticed and taken away, a married woman living under the protection of her husband, or of any person having the care of her in his behalf; or of enticing and taking away, or causing to be enticed and taken away, an unmarried female, under the age of maturity, viz. fifteen years, and living with her parents or other legal guardians, or any persons acting in their behalf; for the purpose of rendering such married woman, or unmarried female minor, a prostitute or concubine, or otherwise disposing of her in an unlawful manner, without the consent of the husband, parent, or other guardian, of the woman or minor thus disposed of; the person so convicted shall be liable to a sentence of fine and imprisonment, to such extent as may appear adequate to the circumstances of the case; and may not exceed the powers vested in the magistrates by Section 19, Regulation 9, 1807; viz. imprisonment for six months; and a fine not exceeding two hundred rupees, commutable, if not paid, to a further period of imprisonment, not exceeding six months. If in any instance the offender shall appear to merit a more severe punishment, he shall be committed for trial before the court of circuit; and the provisions of Section 6, Regulation 17, 1817, are hereby declared applicable to all such commitments."

The sentence  
to be such as  
may appear  
adequate to  
the case, but  
the powers  
hereby vested  
in magistrates  
in no instance  
to exceed those  
vested in them  
by Section 19,  
R. 9, 1807.

Section 3.  
Persons convicted of deserting their wives and families, and of wilfully neglecting to support them, to be required so to do by the magistrate; and on failure subject to what punishment

§ 3. "Any person amenable to the jurisdiction of the zillah and city courts, who may possess the means of supporting his wife and children, and shall notwithstanding desert them and wilfully neglect to provide for their support, on proof thereof to the satisfaction of the magistrate, or joint magistrate, of the zillah or city in which the party so deserting and neglecting his family may reside, shall be required to provide for the maintenance of his family, in a suitable manner, according to his situation and circumstances in life; and on his failing so to do, shall be considered guilty of a misdemeanor, and be liable to imprisonment for a period not exceeding one month. He shall also be liable to a repetition of the sentence, upon any subsequent conviction of a similar misdemeanor, after having been required to provide for the support of his family: provided, however, that nothing in this Section shall render a husband liable to punishment for not maintaining his wife, if

it be clearly shown, that the latter has forfeited all just claim to support from her husband, by living in adultery with another person, or by other acts implying wilful abandonment of his protection."

§ 4. "The above section shall be held applicable to illegitimate, as well as to legitimate children; and may also be applied at the discretion of the magistrate, to secure a proper maintenance for the mothers of illegitimate offspring, whilst in a state of pregnancy, or having the care of an infant child."

Section 4.  
What persons entitled to the benefit of the above Section.

§ 5. "All persons who may voluntarily engage to serve as workmen, of any description, for a stipulated term, or who may voluntarily contract for the performance of any specific work, and who, without good and sufficient cause, shall wilfully quit the service so engaged for, before the expiration of the term agreed upon, or shall wilfully neglect to perform the work so contracted for, shall be deemed guilty of a misdemeanor; and on conviction before a magistrate, or joint magistrate, shall be liable to a sentence of imprisonment not exceeding one month. The magistrate or joint magistrate may likewise require the persons so convicted to complete their stipulated term of service, or to perform the work contracted for, if it appear just and proper to require the same; and any subsequent conviction of wilful neglect to comply with such requisition shall be punishable by a further sentence of imprisonment, not exceeding two months."

Section 5.  
Workmen engaging for a stipulated term, contracting for the performance of work, and without sufficient cause quitting the service or work engaged for, how punishable by the magistrates.

§ 6. *First.* The provisions of the foregoing section are also declared applicable to domestic servants, who may engage to serve for any fixed term; or during the performance of any specific service; or though no such engagement have been entered into, may be employed from month to month; and without good and sufficient cause, shall wilfully quit the service of their employers before the expiration of the fixed term; or before the completion of the stipulated service; or with respect to monthly servants, without giving previous notice for a period not less than fifteen days. *Second.* In like manner no master, or other person, employing a servant for a fixed term, or for a specific service, or from month to month, shall be at liberty, without good and sufficient cause, to discharge such servant, against his will, before the expiration of the fixed term; or the completion of the specified service; or with respect to servants employed from month to month, without giving previous warning of the intended discharge for a period of at least fifteen days, or paying his wages for that period. *Third.* It shall be the duty of the magistrates and joint magistrates, on applications made to them upon the stamp paper prescribed in Section 18, Regulation 1, 1814, (viz. bearing a stamp of eight annas,) to enforce the provisions of the above clause, by causing payment to any servant who may be discharged in opposition thereto, of a sum equal to half a month's wages, in addition to any arrear of wages which may be due to him at the time of his discharge; or if the servant have been engaged for a fixed term, or for a specific service, by causing payment to be made to him of such sum as may appear fully adequate to any loss sustained by him from being discharged before the time agreed upon. *Fourth.* Provided however that no servant shall be entitled to recover more than his arrear of wages, when he may be discharged for any misconduct proved to the satisfaction of the magistrate or joint magistrate, and appearing sufficient to warrant his discharge. Nor shall any workman, or servant, be liable to punishment under the provisions of this regulation, when it may be proved, to the satisfaction of the magistrate and joint magistrate, that his quitting the service of his employer, without previous notice, or before the expiration of a stipulated term, or without having completed the performance of any work contracted for, was occasioned by gross mal-treatment, or by non-payment of

Section 6.  
To what other persons the provisions of the above Section applicable.

Rule to control discharge of servants by their masters, in certain cases.

Magistrates to enforce the provisions of the above clause, on application being made to them on the prescribed stamp paper, and in what manner.

Provision for cases of misconduct; and other cases in which this regulation shall not be enforced



Section 7.  
Sentences of  
magistrates  
open to con-  
trol of the  
courts of cir-  
cuit.

What process to  
be issued,  
on charges  
preferred to  
the magis-  
trates.  
Rule in force,  
before the en-  
actment of R. 9,  
1807; viz. that  
contained in  
R. 9, 1793, § 5;  
extended to  
Benares by R.  
16, 1795, § 4;  
and re-enacted  
for ceded prov-  
inces in R. 6,  
1803, § 5.

Rules of pro-  
cess enacted  
by R. 9, 1807.  
Section 2.  
Parts of R. 9,  
1793, R. 16,  
1795, and R. 6,  
1803, rescind-  
ed.

Section 3.  
How a magis-  
trate is to pro-  
ceed on a com-  
plaint being  
preferred to  
him for any of  
the crimes  
herein speci-  
fied, declared  
not bailable; or  
though the  
crime charged  
be of a heinous  
nature, but  
not expressly  
declared to be  
unbailable.  
To issue a war-  
rant under his  
official seal  
and signature.  
Form of war-  
rant, for ap-  
prehension.

What to be  
specified in  
warrant, when  
bail, or secu-  
rity for keep-

wages due, or by any other cause which may appear to the magistrate or joint magistrate, sufficient to justify or excuse the act complained of."

§ 7. "The whole of the sentences which may be passed by a magistrate, or joint magistrate, under any part of this regulation, will of course be open to the regular control of the court of circuit of the division, according to the general rules in force upon this subject."

By the original rule for the guidance of the magistrates, contained in Section 5 of Regulation 9, 1793, extended to Benares by Regulation 16, 1795, and re-enacted for the ceded provinces by Section 5 of Regulation 6, 1803, they were required, in all cases of a written complaint being preferred to them, upon oath, for any crime or misdemeanor, to issue a warrant for the apprehension of the person complained against. But the immediate arrest of the accused being in many instances found unnecessary and objectionable, especially upon charges of a trivial or exaggerated nature, against persons of respectability; and it appearing expedient that provision should be made for authorizing an enquiry, previous to arrest, when the magistrate may see cause to distrust the truth of a criminal charge preferred to him; as well as for issuing a summons, instead of a warrant, in cases that may not require the immediate apprehension of the party complained against; for dispensing with personal appearance to answer accusations of trivial offences, when the agency of a constituted representative may be sufficient; and with the personal attendance of parties preferring charges of a criminal nature, when sufficient reason can be assigned for their non attendance; also for regulating the demand of bail, in cases wherein security for appearance may be required; the following rules were enacted for these purposes, in Regulation 9, 1807.

§ 2. "So much of Section 5, Regulation 9, 1793, Section 4, Regulation 16, 1795, and Section 5, Regulation 6, 1803, as provides, that on a complaint in writing being preferred upon oath to a magistrate, for any crime or misdemeanor, the magistrate shall issue a warrant for the apprehension of the person complained against, is hereby rescinded, and the following rules are enacted in lieu thereof." § 3. "*First.* Upon a complaint being preferred in writing, to a zillah or city magistrate, against any person subject to his jurisdiction, for treason, murder, robbery, house-breaking, theft, setting fire to a village, house, or other building, counterfeiting the coin, or any other crime declared not to be bailable, or though not so expressly declared, involving such dangerous breach of the peace, or degree of criminality, as from the facts deposed to, before the magistrate, may appear to require the immediate apprehension of the accused, and to render the admission of bail unsafe and improper, the magistrate, on the truth of the charge being deposed to by the complainant, or in the manner required by the following section, shall issue a warrant under his official seal and signature, specifying the crime charged; and directing the officer, entrusted with the execution of it, to apprehend the person accused. *Second.* The warrant shall be in the following form, and shall be directed to the nazir of the criminal court:—

"To \_\_\_\_\_, Nazir of the Foujdarry Adawlut of the zillah (or city) of \_\_\_\_\_.

"Whereas \_\_\_\_\_, inhabitant of \_\_\_\_\_, stands charged on the oath (or solemn declaration) of \_\_\_\_\_, inhabitant of \_\_\_\_\_, with the crime of \_\_\_\_\_, you are hereby directed to apprehend the said \_\_\_\_\_, and produce him before the magistrate of the said zillah (or city); in this fail not. Dated the \_\_\_\_\_ day of \_\_\_\_\_ A. C. corresponding with \_\_\_\_\_."

*Third.* If the magistrate shall, in any bailable case, of the nature above described, judge it proper to authorize the officer, to whom the warrant is

committed, to receive bail for appearance (with or without security for keeping the peace) it shall be so specified in the warrant, with the extent of the bail (and security) required, according to the following form :—

“ To , Nazir of the Foujdarry Adawlut of the zillah (or city) of . Form of warrant, in such cases.

“ Whereas , inhabitant of , stands charged on the oath (or solemn declaration) of , inhabitant of , with the crime of , you are hereby directed to apprehend the said , and to require bail in the sum of sicca rupees for his appearance before the magistrate of the said zillah (or city), on or before the . (You are further required to take security from the said , for keeping the peace, in the sum of sicca rupees .)”

“ If the said shall not give the bail (and security) above stated, you are directed to bring him before the magistrate of the said zillah (or city); herein fail not. Dated this day of A. C. corresponding with .”

*Fourth.* The bail to be taken, for appearance before the magistrate, shall be in the following form :— Form of bail bond for appearance before the magistrate.

“ Whereas , inhabitant of , stands charged with , and is required to appear before the magistrate of the zillah (or city) of , on or before the , to answer to such charge; I hereby bind myself to produce the said before the said magistrate on the date aforesaid; and to be answerable for his appearance until a final order be passed by the magistrate upon the said charge; in default whereof, I further bind myself to forfeit to Government the sum of rupees ; in this I will not fail. Dated this day of A. C. corresponding with .”

*Fifth.* When security may be required for keeping the peace, it shall be taken in the following form :— Form of security bond for keeping the peace.

“ Whereas , inhabitant of , stands charged with , and has been called upon to give security to keep the peace whilst such charge is under investigation, I hereby declare myself surety for the said , that he shall not commit any act that can occasion a breach of the peace, whilst the said charge is under examination; in default whereof, I further hereby bind myself to forfeit to Government the sum of rupees . Dated this .”

§ 4. “ The attendance and deposition of the complainant shall not be indispensable in preferring a criminal charge; when sufficient reason can be assigned for his non-attendance. If the complainant be unable to attend in person; or if he were not himself present at the commission of the act complained of; his written plaint, presented by an authorized agent, and corroborated by the deposition on oath, (or on a solemn declaration, if the rank or cast of the deponent render it improper to require an oath) of one or more persons present, or otherwise personally informed of the truth of the complaint, shall be sufficient grounds for receiving the same, and for issuing process against the party accused;’ unless the magistrate see reason for Section 4  
Personal attendance of complainant under certain circumstances herein described, not indispensable  
Exception

‘ Serious inconvenience having been experienced from the indiscriminate permission allowed to vakeels and agents, to conduct the prosecution of criminal charges, as authorized by the section here cited; it was declared by Section 3, of Regulation 3, 1812, that in ordinary cases, individuals having charges of a criminal nature to prefer,

No warrant to be issued unless the charge be sworn to, or deposed to under a solemn declaration, either by the complainant or some other credible person.

Magistrate not restricted from issuing process for apprehension upon the report of an officer of police, or other credible information.

Section 5. How the magistrate is to proceed, if he see cause to distrust the truth of a complaint.

Section 6. How a magistrate is to proceed against a person charged with a bailable offence.

To issue a summons under his seal and signature, to be served by a single chuprassy or peon, or in certain cases in the mode herein referred to. What the summons is to contain.

making the previous enquiry authorized by the following section, but no warrant for apprehension shall be issued at the instance of a complainant, unless the truth of the charge be deposed to, on oath, (or under a solemn declaration) either by the complainant himself, or by some other credible person. This shall not however be construed to restrict a magistrate from issuing process to apprehend a person suspected of having committed a heinous crime, or for whose apprehension sufficient cause may appear, upon the report of a police officer, or upon any other credible information."

§ 5. "If the magistrate see cause to distrust the truth of a complaint preferred to him, whether from the nature of the charge as manifestly improbable, exaggerated, or vexatious; or from the circumstances deposed to before him, considered with the known situation and character of the person accused; and if the immediate arrest of the party complained against appear unnecessary and objectionable; the magistrate is authorized to postpone issuing his warrant for apprehension, and to cause a previous inquiry to be made, either by means of the local police officers, or in such other mode as he shall judge most proper, for the purpose of ascertaining the truth or falsehood of the complainant's allegations. If the result of such inquiry induce the magistrate to believe the charge well founded, and the offence committed be of the nature described in Section 3, he shall issue his warrant for apprehending the accused, as therein directed. But if the accusation appear groundless, or though well founded, if the offence be of a bailable nature, he is empowered, in the former case, to dismiss the complaint; or in the latter case, to direct bail to be taken from the accused, for appearance, in person, or by vakeel, to answer the charge, as provided by the following section."

§ 6. "*First.* Upon a complaint in writing being preferred to a zillah or city magistrate, against a person subject to his jurisdiction, for any bailable crime, or misdemeanor, which may not appear to require the immediate apprehension of the accused, the magistrate, upon the party complaining making oath, (or a solemn declaration, if the party be of a rank or cast which would render it improper to compel him to take an oath) to the truth of the complaint, or without such oath (or declaration), if satisfactory reason be assigned by the complainant for not attending to make the same, and the truth of the charge be deposed to by some other credible person or persons, shall issue a summons, under his official seal and signature, to be served through the foudarry nazir, by a single chuprassy, or peon, or in the manner prescribed for the service of civil process by Clause Second, Section 2, Regulation 2, 1806,' if practicable and deemed expedient; or in the mode directed by the rules in force for serving warrants on charges of bailable offences against persons employed in the salt department, or in the provision of the Company's investment, if the party complained against be so employed. *Second.* The summons in all such instances shall specify the offence with which the accused is charged, and shall, according to the circumstances of the case, contain a requisition to attend, either in person or by vakeel, to answer

shall attend in person to institute and conduct the prosecution before the magistrate; and likewise before the court of circuit, in cases in which the charge may be made over for trial to that court; and that vakeels or agents shall not be permitted to interfere in the conduct of such prosecutions, unless substantial reasons be shown (to be recorded of course on the proceedings of the magistrate) why the prosecutor himself should not attend to carry it on in person. It shall be the duty of the nizamat adawlut, and of the courts of circuit, to restrain any ill-judged exercise of the discretion vested in the magistrates with respect to this point."

<sup>1</sup> See clause referred to, in page 50.

to the charge, on or before a certain day, to be stated in the summons, according to the following form :—

“ To , Inhabitant of .  
 “ Whereas a complaint has been preferred on oath (or solemn declaration) by , inhabitant of , charging you with the crime of , you are hereby required to appear (in person or by vakeel) before the magistrate of the zillah or city of , on or before the day of to answer to the said charge. Herein fail not. Dated the day of A. C. corresponding with .”

Form of summons.

*Third.* If it be deemed necessary to require bail, the extent of the bail is to be specified in the summons, as follows :—

“ To , Inhabitant of .  
 “ Whereas a complaint has been preferred on oath (or solemn declaration) by , inhabitant of , charging you with , you are hereby required to appear (in person or by vakeel) before the magistrate of the zillah (or city) of , on or before the , to answer to the said charge. You are further required to give bail in rupees for your appearance (in person or by vakeel) on the day aforesaid. Herein fail not. Dated the day of A. C. corresponding with .”

Form to be substituted when bail is required

*Fourth.* The bail to be taken for appearance before the magistrate in pursuance of the above clause, shall correspond with the form prescribed by Clause Fourth of Section 3, of this regulation.” § 7. “If an accused person, on whom a summons shall have been served, as provided in the preceding section, shall not attend in person, or by vakeel, and give bail (if required) according to the exigence of the summons, within the period limited by it, the magistrate shall issue a warrant under his official seal and signature, for

Bail bond to correspond with that prescribed in Clause Fourth of Section 3. How a magistrate is to proceed if the accused, on whom a summons is may have been served, shall

language, slight trespasses, and inconsiderable assaults, or affrays, in which there may be no reason to apprehend that the party complained against will abscond, bail for appearance shall not be required in the first instance; but may at any time, during the investigation of the charge, be called for by the magistrate, if any circumstances should occur to render it necessary. The officer entrusted with the service of the summons in such cases, as well as in all other cases wherein bail may not be required, shall demand only an acknowledgment of the receipt of it; and in the absence of the party, the summons may be served on the principal person in his house or family, if such person be willing to receive the same, and to return an acknowledgment for the party. The officer serving the summons, in such instances, as well as in all cases wherein the magistrate may deem it proper to admit the private adjustment of the parties, shall be further instructed, on the tender of a razeenamah, expressing the plaintiff's desire to withdraw his complaint, and the defendant's acquiescence in the complaint's being withdrawn, to receive such razeenamah, as a sufficient return to the process committed to him. But excepting the trivial cases, noticed in this section, no razeenamah shall be received without the special sanction of the magistrate; nor shall any private compromise be admitted by the magistrate in crimes of a heinous nature, such as, on conviction, may require exemplary punishment for the ends of public justice.”

required Section 5. In what cases bail for appearance is to be required in the first instance. But no bail is required at any time during the investigation. How an officer entrusted with the serving of a summons is to proceed. In what cases the officer serving the summons shall be instructed to receive razeenamah, as acquiesced in by the defendant. Restriction against receipt of razeenamah in this

† These sections have reference to the *evasion of criminal process*, and will be stated in the sequel.

rules for service of criminal process issued by the magistrate, in R. 9, 1807, § 14. Burkundasses, chuprassies or other public officers in the pay of Government prohibited from demanding or receiving diet money from the parties. Penalties for a breach of this prohibition. Peons, or other persons, not in the pay of Government, to receive a certain daily allowance whilst employed in serving process.

What penalty is liable for a breach of this rule. Tullubannah in such cases by whom to be paid. Subject to reimbursement if the charge be proved.

Rule of process to be issued, modified by R. 7, 1811, § 4, with respect to charges of the nature specified in Section 2 of that regulation.

Tullubannah to be paid to peons, or other persons employed to serve the process.

The following rules for the service of criminal process, issued by the magistrates, were enacted in the second and third clauses of Section 14, Regulation 9, 1807 :—“*Second.* Whenever a summons, or other criminal process, may be served by a burkundaz, chuprassy, or other public officer, receiving wages from Government (and such officers are to be employed in serving all criminal processes, especially in cases of a heinous nature, as far as circumstances may admit), no diet money, or other allowance or gratuity, shall be demanded or received, from the complainant or accused, whether the case be adjusted by razeenamah or otherwise; and the demand or receipt of such, by any public officer, directly or indirectly, in violation of this rule, shall be punishable as a criminal offence, on conviction before the magistrate, or court of circuit. The offender shall also be compellable, either by a criminal prosecution, or by a civil action, to refund the amount received; besides being liable to immediate dismissal from office, under the provisions contained in the existing regulations. *Third.* When peons, or other persons not receiving wages from Government, may be unavoidably employed in serving any criminal process, they shall be authorized by the magistrate to demand and receive tullubannah, at the rate of two annas per diem, (or three annas in districts where such higher rate may be usual and necessary) during the time they may be so employed; and shall not demand nor receive more, upon any pretence whatever, under the penalties above stated, with respect to public officers receiving wages from Government. The tullubannah, in such cases, shall be paid, in the first instance, by the party or parties, at whose instance the process is issued (unless the charge be of a heinous nature, and the magistrate deem it proper, that the necessary expense of process be paid on the part of Government), subject to reimbursement from the accused, if the charge be established, under the discretion vested in the criminal courts by Section 8, Regulation 14, 1797, and Clause Third, of Section 39, Regulation 7, 1803.”

It having been deemed expedient to prohibit the police officers, by the second clause of Section 2, Regulation 7, 1811, from receiving any charge of adultery, fornication, rape, calumny, abusive language, slight trespass, or inconsiderable assault; and to provide, by Section 3, of that regulation, that all complaints, or prosecutions for offences of this nature, “shall hereafter be preferred in the first instance, at the cutcherry of the zillah or city magistrate, within the limits of the jurisdiction of which court the offence may have been committed;” the following rule was added in Section 4 :—

“In modification of the rules prescribed for serving criminal process by Clauses Second and Third, Section 14, Regulation 9, 1807, it is hereby declared that those rules are to be considered applicable chiefly to charges or information of crimes or offences of a heinous nature; and that on complaints of the nature specified in the first part of Clause Second, Section 2, of this regulation, the process to be issued, shall be served by peons or other persons, who shall be authorized by the magistrate to demand and receive tullubannah, according to the rate prescribed by Clause Third, Section 14, Regulation 9, 1807; such tullubannah to be paid in the first instance by the party at whose complaint the process may be issued.”

<sup>1</sup> Sections 5 and 6, of Regulation 7, 1811, may be also noticed in this place; although the former is more immediately connected with what has been already stated of the enlarged powers of the zillah and city magistrates. § 5. “Whenever any charge preferred in a zillah or city court shall upon investigation prove manifestly malicious, vexatious, or unfounded, the magistrate is hereby empowered, in extension of the punishment prescribed by Section 10, Regulation 9, 1793, to sentence the party by whom the charge shall have been preferred, to such period of imprisonment, as on

It being further judged necessary to provide for the subsistence of witnesses, whose evidence may be required in cases of adultery, fornication, calumny, abusive language, slight trespass, and inconsiderable assault, the following rules were enacted in Section 2, of Regulation 3, 1812 :—

Additional rules enacted in R. 3, 1812, § 2.

“*First.* By Section 4, Regulation 7, 1811, it is provided, that whenever process may be issued by a magistrate in consequence of any charge of adultery, fornication, rape, calumny, abusive language, slight trespass, or inconsiderable assault, (with the exception however of cases of *maihem*, actual affrays, and tumultuary assemblies of the people) such process shall be served by peons or other persons, who shall be authorized by the magistrate to demand and receive tullubannah according to the established rate; such tullubannah to be paid in the first instance by the party at whose complaint the process may be issued. It being further necessary to make provision for the payment of the subsistence of witnesses in cases of the above nature; it is hereby declared, that no process shall be issued for the attendance of witnesses, on any charge of adultery, fornication, calumny, abusive language, slight trespass, or inconsiderable assault, unless the person, by whom such charge shall be preferred, shall deposit in the hands of the nazir, a sufficient sum for the maintenance of the witnesses, who may be summoned on his application (being persons residing at a greater distance than five coss from the magistrate’s cutcherry) for their support during the period of one month, at such rate as may be fixed by the magistrate in each case, not being however in any instance less than one anna, or more than three annas per day for each witness. *Second.* Should the detention of the witnesses from their homes be less than one month, the witnesses shall be only deemed entitled to subsistence during the period that they may have been necessarily absent in attendance at the magistrate’s cutcherry, in proceeding thither, and in returning to their homes; and the surplus of the money, which may have been deposited by the prosecutor, shall be returned to him. *Third.* On the other hand, should the witnesses be detained in attendance on the magistrate during a longer period than that above specified, the prosecutor shall deposit, at the expiration of each month, such further sum as may be necessary for the subsistence of his witnesses during the month next ensuing, until the case shall have been finally disposed of, or the witnesses discharged from their attendance. Should the prosecutor in any instance fail to make the prescribed monthly deposit, the complaint shall be immediately dismissed. *Fourth.* The foregoing provisions are not intended to apply to cases of *maihem*, actual affrays, or tumultuary assemblies of the people, requiring the immediate interposition of the police for the maintenance of the public tranquillity. In such cases, as well as in charges for heinous crimes, the subsistence of indigent prosecutors and witnesses will be defrayed by Government. If however a prosecutor shall in any instance, by an exaggerated and perverted representation of the case, procure process to be issued against any person for any such crime or public misdemeanor, and it shall on enquiry appear that the case was nothing more than a slight trespass, inconsiderable

No process for the attendance of witnesses in certain cases to be issued, unless the person by whom the charge may be preferred shall deposit in the hands of the nazir a sufficient sum for the maintenance of the witnesses during the period of one month.

Should the witnesses be detained less than a month the surplus of the deposit money shall be returned to the prosecutor. If the detention of the witnesses be too long a period than that specified in the clause. First of this section, the prosecutor shall deposit at the expiration of each month further sum. Or, in case of a charge, the complaint shall be dismissed. Cases in which the foregoing provisions are not intended to apply.

consideration of the apparent motives and tendency of the said charge shall appear proper; not exceeding however the period of six months.” § 6. “The zillah and city magistrates are hereby strictly prohibited from referring to their police darogahs or other police officers of the description noticed in Section 2, of this regulation, for investigation or report, any charges of the nature of those which such officers are by that section prohibited from receiving. All investigations for the purpose of ascertaining the truth or falsehood of such charges shall be invariably conducted by the magistrate in person, or by his assistant, aided, so far as may be authorized by the existing regulations, by the native officers attached to his sudder cutcherry.”

Account to be kept of all sums received and disbursed on account of the subsistence of witnesses. Magistrate prohibited from issuing any process without previously satisfying himself that sufficient grounds exist for the prosecution

Rules for procuring attendance and evidence of witnesses in the civil courts, declared by Section 2, R. 50, 1803, to be applicable to witnesses, whose attendance and evidence may be required by magistrates, and criminal courts. Proviso.

Zillah and city magistrates, and courts of circuit and nizamat adawlut, empowered to commit to custody and fine witnesses not attending, or refusing to give evidence, or sign their depositions.

assault, or other trifling offence, such prosecutor shall be held accountable for whatever sum may appear to be due from him for the subsistence of his witnesses, on the principles stated in the three preceding clauses of this section of the present regulation. *Fifth.* It shall be the duty of the nazir to keep an accurate and particular account of all sums received and disbursed by him on account of the subsistence of witnesses under this regulation, which shall be inspected monthly by the magistrate or his assistant. *Sixth.* With the view of further restraining the institution of prosecutions for adultery, fornication, calumny, abusive language, trespasses and assaults, which ordinarily prove to be unfounded, misrepresented, or greatly exaggerated, the magistrates are hereby strictly prohibited from issuing any process on these, as well as charges for more heinous offences, without previously examining the prosecutor as to the specific facts of the case, and satisfying themselves that adequate grounds exist for proceeding against the accused party. In cases likewise in which the magistrate shall see grounds to distrust the truth of a charge, he shall, previously to issuing process against the accused, summon the witnesses named by the prosecutor, or as many of them as he may judge proper, and examine them as to their knowledge of the facts and circumstances which are the subject of the complaint; but enquiries of this nature shall not on any account be committed to the police darogahs, who are precluded from taking cognizance of the cases to which this provision specially refers, by Regulation 7, 1811. On occasions on which the magistrate may judge it necessary to make the previous enquiry above noticed, the rules contained in the preceding clauses of this section, regarding the payment of the subsistence of witnesses, shall be duly enforced."

The rules which have been stated in the first part of this Analysis,<sup>1</sup> for procuring the attendance and evidence of witnesses in the civil courts, for administering oaths to witnesses in these courts, and for dispensing with the oath of witnesses of a rank, or cast, which, according to the prejudices of the country, would render it improper to compel them to take an oath, are extended, by Section 2, of Regulation 50, 1803, "to witnesses whose attendance and evidence may be required by any zillah or city magistrate; or by the courts of circuit, or nizamat adawlut, in any criminal trials, or matters cognizable by the magistrates, and these courts respectively. But all summonses to witnesses in criminal cases shall be served by a chuprassy, peon, or other officer of the magistrate; or by a police officer; instead of being delivered to parties, to be served on their own witnesses, as admitted, at the discretion of the judges, in civil cases." The following provisions are also included in the second, third and fourth clauses, of Section 2, Regulation 50, 1803:—"Second. The power of committing to close custody, and fining in a sum not exceeding five hundred rupees, any witness duly summoned, and after receiving the summons, not attending as thereby required, or although attending, refusing to give evidence and sign his deposition, which by the section abovementioned is vested in the judges of the civil courts, shall be considered to be equally vested in the zillah and city magistrates, and in the courts of circuit and nizamat adawlut. But witnesses attending and refusing to give evidence, whether in the civil or criminal courts, shall, in the first instance, be committed to custody only; and shall be called upon a second time, after such interval as may by the court be judged sufficient, (not being less than one entire day;) when if the witness persist in his refusal to give evidence, he shall be fined in proportion to his situation in life, (not exceeding the amount limited) and confined in the jail of the civil court,

until the fine be discharged ; or for such period of imprisonment as may be fixed in lieu of the fine, under Section 3, Regulation 14, 1797 ; or, if the cause or trial, in which the evidence of the witness may be requisite, shall be still depending, until he shall consent to give his evidence therein : after which, in such case, he shall be released and the fine remitted. *Third.* Provided however, that it be not considered necessary that any trial before a court of circuit be postponed to a future session for the evidence of a witness confined under this section ; unless the judge of circuit should think it proper to postpone the same on this account, under the discretion vested in him by Section 49, Regulation 9, 1793 ; nor shall it be necessary to postpone the decision of any case, civil or criminal, for the evidence of a witness so confined, beyond such period as may appear proper to the court ; before which the suit or trial may be depending. *Fourth.* Provided also, that all fines imposed by the zillah and city magistrates, under this section, whether for the non-attendance of witnesses duly summoned, or for the refusal to give evidence, shall be reported at the next ensuing jail delivery, with all proceedings relative thereto, to the judges of the courts of circuit ; who, in the event of any representation being made to them relative to such fine, are to examine the magistrate's proceedings, and report to the nizamat adawlut (as required in other cases by Section 17, Regulation 9, 1793 ; and Section 5, Regulation 9, 1801 ;) if the fine shall appear to be immoderate, or to have been imposed on insufficient grounds ; or, if otherwise, are to inform the party complaining by a written order on his petition."

No trial before a court of circuit, nor the decision of any case, civil or criminal, to be postponed for the evidence of a witness so confined beyond such period as the court shall deem proper.

All fines imposed by the zillah and city magistrates under this section, to be reported to the court of circuit, who on representation made to them, are to examine and report to the nizamat adawlut, should they deem the fines immoderate.

Provisions for resistance, or evasion, of criminal process, in R. 11, 1796, and R. 9, 1801, § 4, 5; re-enacted for ceded provinces in R. 3, 1804, § 2, 3, 4, 5. These provisions modified by R. 20, 1817, § 26 ; included in the next section.

But former rules not rescinded ; and therefore specified in this place. Section 2. Zillah magistrates how to proceed against persons resisting their processes.

Regulation 11, 1796, and Sections 4, 5, of Regulation 9, 1801, (re-enacted for the ceded provinces in Sections 2, 3, 4, 5, of Regulation 3, 1804,) contain provisions for the punishment of resistance to processes of the zillah and city magistrates, and officers of police ; as well as for compelling the appearance of persons charged with acts of a criminal nature, who may abscond, or otherwise evade, the process issued against them. These provisions have undergone some modification by the rules enacted in Section 26, Regulation 20, 1817, *for reducing into one regulation, with amendments and modifications, the several rules which have been passed for the guidance of darogahs and other subordinate officers of police ;* which will be more properly detailed in the next section. But as the former rules, though modified, have not been rescinded, they may be specified in this place, as re-enacted, with the amendments of Regulation 9, 1801, in the following sections of Regulation 3, 1804.

§ 2. "*First.* If any person amenable to the authority of the magistrates, or police officers, shall resist, or cause to be resisted, any warrant, order, or other process of any magistrate, or police officer, the magistrate of the zillah or city in which such resistance may have been made, on the same being charged on oath, shall, if practicable, cause the party accused to be apprehended, and brought before him to answer to the charge. If the party shall abscond or conceal himself so that he cannot be apprehended, or if, on any account, he cannot be immediately apprehended, the magistrate is to cause a written proclamation, in the Persian and Hindostanee languages, requiring the party to appear to answer the charge against him within a fixed period of time, not less than one month, to be publicly read and proclaimed by beat of drum, and to be affixed in some conspicuous part of his cutcherry, as well as on the outer door of the house in which the party may have usually dwelt, or

<sup>1</sup> In Bengal, or Orissa, the proclamation must be in Persian, and the vernacular language of either of these provinces. Further instructions to the police darogahs, relative to the mode of issuing the proclamation, and certifying the same to the magistrate, are contained in the 11th and 12th clauses of Section 26, R. 20, 1817.



Judgment to be passed against persons convicted of such resistance.

If a proprietor of land paying revenue to Government, or of lakheraj land.

If a sudder farmer holding a farm from Government.

If the offender be not of the above descriptions.

Magistrates may inflict punishment in cases without the sanction of the Government.

some conspicuous place in the village in which he may have generally resided. If the party charged as above cannot be apprehended, and shall not, within the period fixed by proclamation, appear to answer the charge against him; or if he shall be apprehended or shall appear in pursuance of the proclamation, and after receiving his answer to the charge, and hearing the evidence he may adduce in his defence, it shall be proved to the satisfaction of the magistrate that he is guilty of the charge; the magistrate is to pass judgment against him in the following manner. *Second.* If the offender be a zemindar, talookdar, or other proprietor of land paying revenue to Government; or the proprietor of *altunga*, *ayma*, or other lands exempt from revenue, situated within the zillah or city in which the resistance was made; and the case shall not come under the rule provided in Clause Fifth of this Section; the magistrate shall declare such lands to be forfeited to Government;<sup>1</sup> and, by a precept under his official seal and signature, shall immediately give notice to the collector of the district; who, on receipt thereof, shall cause the lands in question to be attached on the part of Government, and shall hold them in attachment till the receipt of a further precept from the magistrate to relinquish them, or of orders from the Governor General in Council, to be communicated to him in the manner hereafter directed. *Third.* If the offender be a sudder farmer, holding a farm from Government within the zillah in which the resistance may have been made; and the case shall not come under the rule provided in Clause Fifth of this section; the judgment against him shall declare his lease cancelled; and the magistrate, by a precept under his official seal and signature, shall immediately give notice to the collector of the district, who, on receipt thereof, shall proceed as above required with respect to lands declared forfeited to Government. *Fourth.* If the offender be not a proprietor of land or sudder farmer paying revenue to Government, as described in the two foregoing clauses, the judgment against him shall declare him liable to the payment of such fine to Government as may appear proper, upon a consideration of his rank and circumstances in life and the offence of which he may be convicted; and the magistrate shall immediately proceed to the attachment of any property appertaining to the offender for the recovery of the same, in the manner authorized by the regulations for the recovery of sums of money decreed by the civil courts of justice. In cases wherein the offender may have been apprehended, and may not be possessed of property adequate to the discharge of the fine adjudged against him, the magistrate, with the concurrence of the nizamat adawlut, may commute such fine to imprisonment or corporal punishment. *Fifth.* In cases of resistance to the process of a magistrate or a police officer, not attended with aggravating circumstances, wherein the magistrate before whom the charge may be tried shall judge it sufficient to inflict the punishment which he is authorized to inflict for petty offences, under Section 8, Regulation 6, 1803,<sup>2</sup> it shall not be necessary to transmit his proceedings for the consideration of the nizamat adawlut, as required by Clause Sixth of this

<sup>1</sup> The third clause of Section 26, R. 20, 1817, authorizes the magistrate (subject to confirmation by the nizamat adawlut) to extend the penalties declared in this and the next clause, to any land or sudder farm, of the convicted offender, "in any zillah or city jurisdiction, not being that in which the offence was committed."

<sup>2</sup> Or Section 8, R. 9, 1793, in the lower provinces, and Benares. But this provision is superseded by the fifth clause of Section 26, R. 20, 1817; which provides that "in all instances of resistance to the process of a magistrate or police officer, wherein the magistrate may be of opinion that a fine to Government, not exceeding two hundred rupees, commutable, if not paid, to imprisonment not exceeding six months, will be an adequate punishment for the offence, he is authorized to adjudge the same; instead of a forfeiture of land, or farm."

Section ; but the judgment of the magistrate shall be executed, in such cases, without reference to the nizamat adawlut ; subject to the general rule contained in Section 17, Regulation 6, 1803, ' whereby the judgments of the several magistrates are liable to revision by the court of circuit ; and if appearing to have been passed upon insufficient grounds, to be altered or reversed by the court of nizamat adawlut. In the execution of this rule, the judges of the court of circuit, to whom the original proceedings of the magistrates are submitted at the successive jail deliveries, are expected to examine with attention the proceedings of the magistrate in any case wherein a petition of complaint may be preferred to them at the jail delivery next after the magistrate's decision upon the case ; and to make the report directed by the above section to the court of nizamat adawlut, if the circumstances of the case shall appear to require it ; ' or, if otherwise, to inform the party complaining by a written order upon his petition. *Sixth.* Provided always, that the whole of the judgments passed by the magistrates under this regulation, (with an exception to the judgments passed under the preceding clause) be immediately reported, with a complete copy of their proceedings, to the court of nizamat adawlut, and the orders of that court be received, under the following section, before the judgment passed by a magistrate under this regulation, be considered final and conclusive." § 3. "The nizamat adawlut, on the receipt of the proceedings above referred to, are to pass such order thereupon as they may think proper, on due consideration of the evidence and all the circumstances of the case ; and in all instances wherein the forfeiture of the offender's lands or lease may appear to them too severe a punishment for the offence, they are authorized to commute the same for such fine to Government as they may judge adequate, and order the attachment of the lands to be taken off on the payment thereof. The sentence of the nizamat adawlut is to be final in all cases of fine, imprisonment, and corporal punishment ; but in case they shall confirm the judgment of the magistrate for a forfeiture of the offender's land or lease, they are, previously to ordering such sentence to be carried into execution, to transmit their proceedings, with those of the magistrate, accompanied by an English translation of such proceedings, to the Governor General in Council, who will finally determine, whether the sentence of forfeiture shall be put in force, or commuted to a fine, or otherwise ; and who, whenever he may order the land or lease of the offender to be forfeited to Government, will, at the same time, cause the necessary instructions for the future disposal of the land to be conveyed to the collector through the board of revenue. In case the magistrate's judgment of forfeiture be set aside, either by the nizamat adawlut, or the Governor General in Council, he is immediately, on being informed thereof, and on receipt of the fine, (if a fine be ordered) to issue a precept to the collector, requiring him to remove the attachment, and to cause a full and fair account to be rendered of all receipts and disbursements during the period of attachment."

§ 4. "*First.* If any person, charged with an offence of a criminal nature, shall abscond, or conceal himself, so that upon a process issued against him by a magistrate or police officer he cannot be found, the magistrate is to cause a written proclamation, (in the Persian and Hindostanee languages) ' requir-

In such cases the judges of the court of circuit are to examine the proceedings of the magistrates with attention, and report thereon.

Judgments of magistrates under this regulation, (with the exception specified in Clause Fifth,) to be reported to the nizamat adawlut, without whose orders such judgments not to be considered final and conclusive. Section 3. Nizamut adawlut how to proceed in cases referred to them under this regulation.

Section 1. Magistrates how to proceed age not per-son who may evc. do then by

<sup>1</sup> Or Section 17, R. 9, 1793, for the lower provinces and Benares.

<sup>2</sup> Instead of a report by the nizamat adawlut, as required by the original rules here referred to, it is directed, in Section 22, R. 9, 1807, that a further inquiry be made, if practicable, by the magistrate ; and the result communicated to the judges of the court of circuit, collectively.

<sup>3</sup> Or in the Persian, and Bengal, or Orya language, within the province of Uengal, or Orissa. The fourth clause of Section 26, R. 20, 1817, extends the competency of the magistrate to order the attachment of any land, or other immovable property, or sudder

Lands, or other real property to be attached upon non attendance after proclamation. Attachment in what manner to be made, if the absentee be a proprietor or farmer of land paying revenue to Government

Or, if the absentee be not of the above descriptions

Attachment to be taken off on attendance of the absentee, and an account rendered of receipts and disbursements. Report to be made to the Governor General in Council, in case the absentee shall not attend within six months after the attachment of his lands. Section 5. Magistrates not restricted from admitting to bail persons accused of resistance to criminal processes in certain

ing the absent party to appear to answer the charge against him within a fixed period of time, not less than one month, to be publicly read and proclaimed by beat of drum; and shall cause such proclamation to be affixed in some conspicuous part of his cutcherry; as well as on the outer door of the house in which the party may have usually dwelt; or some conspicuous place in the village in which he may have generally resided. In case the party shall not appear and deliver himself up within the period fixed by such proclamation, the magistrate, on receiving the nazir's return to this effect, is to order the attachment of any land or other real property held by the absentee within his jurisdiction, in the following manner. *Second.* If the absentee be a proprietor of land, or sudder farmer paying revenue to Government, he is to issue a precept, under his official seal and signature, to the collector of the district, requiring him to hold the land or farm of the absentee in attachment, till the receipt of further notice; and the collector is accordingly to obey such requisition, and to take such measures as may be necessary for the due care and management of the lands whilst under his charge, subject to the instructions of the board of revenue, to whom he is to make an immediate report of any instances of land being delivered over to him under this regulation. He is also to relinquish such lands, on being advised by the magistrate that the attachment has been taken off, on the attendance of the absentee; and is to cause a full and fair account to be rendered of all receipts and disbursements during the period of attachment. *Third.* If the absentee be not a proprietor or farmer of land paying revenue to Government, but, as a dependant talookdar, under-farmer, or ryot, or in any other capacity whatever, be the tenant of landed property capable of attachment, the magistrate is to issue a precept to the collector of the district, directing him to attach the same, and adopt the necessary measures for the due care and management of it whilst under his charge; paying from the product any rent which may become due to the zemindar or other person entitled thereto; and deducting all necessary expenses in the account to be rendered to the absentee, whenever he may attend, and the attachment of his property be removed. *Fourth.* In all instances wherein an attachment of property may be ordered, under the foregoing rule, the magistrate, immediately on the attendance of the party for whose appearance it was ordered, is to direct, by a written precept, that the attachment be removed, and that a full and fair account be rendered of all receipts and disbursements during the period of attachment. *Fifth.* Should the absentee neglect to attend for a period of six months after the lands have been ordered under attachment, the magistrate is to report the case to the Governor General in Council, who will pass such order upon it, and upon the future disposal of the lands, as he may judge proper."

§ 5. "The rules contained in this regulation, shall not restrict the magistrates from admitting to bail persons charged with resistance to a warrant, order, or other process of a magistrate or police officer, in cases not attended with aggravating circumstances, or in any case when the magistrate, upon receipt of the charge, or in the course of his enquiry respecting it, or after he shall have passed judgment upon it, during the reference required to be made to the nizamat adawlut, may judge proper to admit the defendant to bail.

farm, held by the absentee in any other zillah or city jurisdiction, than that in which the offence charged may have been committed.

Further provisions are contained in the 6th, 7th, 8th, 9th, and 10th clauses of Section 26, R. 20, 1817, for the attachment, and eventual disposal, of any movable property in the possession of persons resisting or evading the process of a magistrate, or police officer, when such persons may not be proprietors or farmers of land, capable of attachment, under the rules stated.

On the contrary, as resistance of process is not included in the specification of crimes declared not bailable by Section 7, Regulation 6, 1803;<sup>1</sup> and as the penalty provided for this offence by the present regulation is forfeiture of property, or fine; (with eventual imprisonment or corporal punishment if the fine be not paid;) it is hereby declared, that persons apprehended on a charge of resistance of process, under this regulation, or under any other regulation, and who may not be accused of any aggravating crime, in addition to the resistance of progress, such as is declared not bailable, are to be admitted to bail, until a final decision shall have been passed upon the charge; provided the bail offered by them shall appear to the magistrate, or other public officer to whom the charge may be preferred, sufficient for securing the appearance of the person so charged during the prescribed investigation of the case."

In what cases such persons may be admitted to bail.

The magistrates are directed, upon receiving any criminal charge, to ascertain from the complainant (or his representative, if the charge be preferred by agency) and record upon their proceedings, on what day of the month, in what year, and at what time of the day or year, the act complained of was committed. When the person accused (or his vakeel, if he be allowed to appear by a vakeel) is brought before them, they are to enquire into the truth of the charge, by examining the parties and witnesses; and committing their depositions to writing. The prosecutor and witnesses are to be examined upon oath, or under the solemn declaration prescribed, in similar cases, for parties and witnesses in the civil courts, if they shall be of a rank or cast, which according to the prejudices of the country, would render it improper to compel them to take an oath.<sup>2</sup> But the prisoner is not to be sworn to the truth of his answer, or defence: and the magistrates are strictly enjoined to satisfy themselves that all confessions made by prisoners are free and voluntary. When a prisoner confesses before them the crime or misdemeanor of which he is accused, or confirms any former confession, they are directed to have such confession, or confirmation, witnessed by as many of their officers, or other creditable persons, who may be present at the time, as the Mohummudan law requires to give it validity:<sup>3</sup> and if the case be referrible to the court of circuit, to cause such witnesses to be in attendance at the next session of that court. The magistrates are likewise directed, notwithstanding such confessions, invariably to summon the witnesses to the commission of the crime or misdemeanor, alleged against the prisoner; and to bind over such witnesses also to attend the court of circuit, (if the case be referrible to

Proceedings to be held by the magistrate, upon the trial of criminal charges.

R. 9, 1793, § 6 Ext. to Benares, by R. 16 1795, § 4, and to ceded provinces by R. 6 1803, § 6.

Particulars of charge to be recorded.

R. 9, 1793, § 5 and R. 6, 1-03 § 5.

Inquiry to be made after, at tend court th accu

R. 50, 1803 § 2 3, and R 1803, § 25

R. 9, 1793, § 5, and R. 6, 1802 § 5, 6

Instructions relative to confessions of prisoners.

<sup>1</sup> Or Section 7, R. 9, 1793, for the lower provinces, and Benares.

<sup>2</sup> It is provided in the fifth clause of Section 25, R. 8, 1803, and a corresponding section in R. 50, 1803, that "in charges preferred, and prosecutions conducted, on the part of Government, the vakeel of Government, or other person acting as prosecutor for Government, shall not be required to make oath, or subscribe a declaration to the truth of the charge, when preferring it to the magistrate, or stating it before the court of circuit."

<sup>3</sup> The magistrates were instructed, by a circular order of the nizamat adawlut, under date the 4th July, 1800, to cause all confessions "to be attested generally by four, or at least by three, creditable and respectable witnesses, who can read and write." They are further directed, on the 16th July, 1811, "to make it a general rule, in all cases of confession before them, to specify in English, on the confession, that it was made before them; the date when made; and the name of the person confessing. All such confessions to be attested by the magistrate, or other person, before they are made, with his signature at length; and the specification of his office." The magistrates, as well as the courts of circuit, were likewise instructed, on the 13th August, 1814, "to observe it as an invariable rule, to specify, in all examinations taken, and proceedings held by them, the date and month of the era current in their respective jurisdictions; as well as the Christian era in which the examinations are taken, and proceedings held."

Act 1793, § 15,  
16 and R 6,  
1803, § 15, 16  
Rule concern  
magistrates  
taken before  
magistrates

R 1797, 7  
enacted in  
ceded provin  
in R 7  
§ 15, 16  
rules for exa-  
mination of  
parties and  
witnesses be-  
fore magis-  
trates and  
officers of ci-

that court) that they may be examined, in the same manner as if the prisoner had denied the charge. The magistrates are further required to take special care, that persons apprehended are not made to suffer corporal punishment, or otherwise ill treated, under the pretence of compelling them to answer truly to questions put to them, or any other pretext whatever.<sup>1</sup> All depositions taken before the magistrate, are to be written on separate papers, signed and attested, and arranged according to their respective dates. In trials referred to the court of circuit, all papers written in any other language than the Persian, are to be accompanied with a translation in that language;<sup>2</sup> and the following general rules prescribed in the second and succeeding clauses of Section 7, Regulation 4, 1797, (re-enacted for the ceded provinces in Section 18, of Regulation 7, 1803,) are to be observed in the examination of parties and witnesses, as well before the magistrates, as before the courts of circuit. *Second.* All examinations of parties, and witnesses, are to be taken down in the language and character in which the person examined may desire to have the same recorded; and such person, whether party or witness, is to be allowed to read the same when finished; or, if unable to read, it is to be read to him; after which, if he admit the record to be correct, he is to affix his name or mark to it; and the judge, magistrate, or other officer, before whom such examination may have been taken, is to certify the same under his official signature on the original record; as well as on a Persian translation thereof, to be annexed to the original examination, (in case the same may have been taken down in any other language than the Persian;) that the proceedings may be complete for the perusal of the law officers of the court of circuit, as well as those of the nizamat adawlut, in the event of the trial being referred to that court. *Third.* In the examination of witnesses, leading questions, suggesting an answer, or having tendency to such suggestion, are to be carefully avoided; and the interrogatories to them are to be proposed in such general terms as may bring forth all the information they possess, and lead to a discovery of the truth. With this view, the parties are to be allowed to cross examine the witnesses, and the judge or magistrate should also cross examine them, when necessary for the same purpose. *Fourth.* All examinations of parties and witnesses, besides the name of the person examined, are to specify the name of his or her father, and if a married woman, the name of her husband; also the religion, cast, profession, and age of the party or witness; and the village and pergunnah in which they reside. *Fifth.* When any stolen property, or instrument of violence, stated to have been found upon the prisoners, or in their houses, is produced before the magistrate,<sup>3</sup> or court of circuit, the prosecutor, and any witnesses brought to give evidence thereupon, are to be carefully examined relative to the identity of such property, or instrument, recognised by them; and the

<sup>1</sup> See further detailed instructions on this point, communicated in a circular letter from the nizamat adawlut to the courts of circuit, under date the 23rd August, 1810 (Printed Circular Orders, No. 20.) and Section 19, R. 20, 1817, relative to officers of the police, cited at length in the next section.

<sup>2</sup> Section 23, Regulation 9, 1793, (re-enacted for the ceded provinces by Section 22, Regulation 6, 1803,) further directs that "all complaints, or charges, with the orders upon them, are to be recorded in the office of the magistrate, in the English, and in the Persian, Bengal, or Hindostanee language." But this rule may be considered obsolete, with respect to the English record, which could not be kept, as directed, without much inconvenience and expense.

<sup>3</sup> The magistrates and police officers are enjoined, by Section 7, Regulation 14, 1797, "to use all diligence to recover stolen property;" and particular rules for the guidance of the latter, in the search for plundered or stolen property, are prescribed in Section 16, R. 20, 1817

circumstances of the same having been found upon the prisoners, or in their houses. The principle of this rule is to be further applied in all instances of circumstantial evidence to which it may be applicable. *Sixth.* With a view to impress upon the witnesses the necessity of caution and accuracy in delivering their evidence, it is the duty of the Mullah Koranee, or of the Brahmin, to repeat aloud to them, in the language which they best understand, the following admonition, immediately after they shall have sworn respectively; viz. "In delivering your evidence under the oath now administered, you are required to declare the truth, the whole truth, and nothing but the truth! you are carefully to distinguish what you personally know as an eye-witness, or otherwise, from what you may have heard from others; and are solemnly bound to answer all questions put to you on the trial before the court, without any regard to the prosecutor or prisoner, to the best of your information and belief."

When the magistrate has completed his inquiry, if the case be such as he is authorized to determine himself, without reference to the court of circuit, he is empowered to pass sentence of acquittal and discharge, or of conviction and punishment, under the restrictions already stated. In charges of a more heinous nature, such as, on conviction, subject the offender to penalties, beyond what the magistrate is authorized to inflict; the following rule is prescribed:—"If it shall appear to the magistrate that the crime or misdemeanor charged against the prisoner was never committed; or that there is no ground to suspect him to have been concerned in the committing of it; the magistrate shall cause him to be forthwith discharged; recording his reasons. If, on the contrary, it shall appear to the magistrate that the crime or misdemeanor was actually committed; and that there are grounds for suspecting the prisoner to have been concerned in the perpetration of it; the magistrate shall cause him to be committed to prison, or held to bail, (according as the offence may be bailable or not) to take his trial at the next session of the court of circuit; and shall bind over the complainant to appear and carry on the prosecution, and the witnesses to attend and give their evidence.<sup>1</sup> It is further directed, that "in all cases of a prisoner being committed, or held to bail, for trial before the court of circuit, the magistrate who shall order him

Sentences . . .  
passed by the  
magistrate in  
cases which he  
is authorized  
to determine.  
Rule to be ob-  
served by the  
magistrate in  
cases not tri-  
able to the  
court of cir-  
cuit.  
R. 9, 1793, &  
re-enacted in  
revised provin-  
ces in R. 1  
1803, &c.

R. 9, 1796, &  
re-enacted in  
revised provin-  
ces in R. 9  
1803, &c.  
Prisoners to  
be committed  
to bail, for  
before the

<sup>1</sup> On the 7th December, 1797, the courts of circuit were instructed by the nizamat adawlut, in all future trials held before them, to record on their proceedings that the admonition here cited, has been repeated to the witnesses as directed. They were further desired "to remind the witnesses examined before them of this admonition, particularly that part of it which enjoins them carefully to distinguish what they personally know, from what they may have heard from others, whenever, in the course of their examination, there may appear occasion for it."

<sup>2</sup> The court of nizamat adawlut having observed, that in many instances distinct charges, preferred against prisoners by separate prosecutors, were blended and proceeded upon by the magistrates and courts of circuit in one trial, and being of opinion, that trials upon distinct charges, especially where the prosecutors are also distinct, should be kept separate, the magistrates and courts of circuit were instructed accordingly by a circular order dated the 24th March, 1796. Vide Printed Book of Circular Orders, No. 2. The following observations of the nizamat adawlut, under date the 21st August, 1816, upon the rule cited from Section 5, of Regulation 9, 1793, may likewise be here noticed. "Under the operation of this rule, it must be expected that persons committed by the magistrate, on grounds of suspicion, will be frequently acquitted by the court of circuit, from want of sufficient evidence for conviction, and this can be obviated only by requiring the magistrates to make a full enquiry into all the charges preferred to them; with authority to discharge the prisoner, if there shall not appear to be legal proof, or strong ground of presumption against him, such as may be judged sufficient for his conviction before the court of circuit." A more full report on this subject was submitted to Government in page 214 to 222 of a letter from the nizamat adawlut, (which has been printed,) dated 9th March, 1818.

court of circuit, to be questioned respecting their witnesses.

R. 9, 1793, § 12, and R. 9, 1796, § 3, re-enacted for ceded provinces in R. 6, 1803, § 12, 33. And all witnesses named by them, at any time before the session of the court of circuit, to be summoned.

R. 9, 1793, § 7, extended to Benares, by R. 16, 1796, § 4, and re-enacted for ceded provinces in R. 6, 1803, § 7. In what cases bail not to be admitted.

R. 9, 1807, § 9. Explanation of preceding rule. In cases of homicide, not involving the crime of murder.

to be so committed, or held to bail, shall immediately, after passing such order, question the prisoner whether he wishes to have any witness or witnesses examined in his defence before the court of circuit; and, in the event of his answering in the affirmative, shall cause a list of the witnesses named by the prisoner, specifying their designations and places of abode, to be taken down and recorded upon his proceedings; or in the event of the prisoner's replying in the negative, shall cause his reply to that effect to be recorded on his proceedings, for the information of the court of circuit." Also, that "in the event of any person, whether committed or held to bail, for trial before the court of circuit, at any time before the session of that court, desiring the examination of any witness or witnesses upon his trial, although the same may not have been named by him at the time of his being committed, or held to bail, the magistrates shall be careful to cause the attendance of such witnesses, as well as of those before named, at the time fixed for the trial of the party who may desire their examination."

It is declared by Section 7, Regulation 9, 1793, (extended to the province of Benares, with an additional clause including arson, by Section 4, Regulation 16, 1795; and re-enacted for the ceded provinces by Section 7, Regulation 6, 1803;) that "persons accused of murder, robbery, setting fire to any house or village,<sup>1</sup> house-breaking, theft, or counterfeiting of the coin, provided there shall appear sufficient grounds for committing them for trial, shall not be admitted to bail." But the following explanation of this rule is contained in Section 9, Regulation 9, 1807:—"In explanation of Section 7, Regulation 9, 1793, and Section 7, Regulation 6, 1803, it is hereby declared, that no species of homicide, except murder, is included in the provisions, which forbid the admission to bail of persons accused of murder. If the charge be for manslaughter, or any species of illegal homicide not involving the crime of murder, the magistrate is authorized to proceed in the first instance, either by warrant for taking into custody, or by summons requiring bail, as he may judge proper, on consideration of the circumstances of the case, and of the condition and character of the party accused. After the enquiry directed by Section 5, Regulation 9, 1793, and Section 5, Regulation 6, 1803, if the magistrate shall be of opinion, that the facts and circumstances in evidence do not establish the crime of murder, but that there is sufficient ground for bringing the person complained against to trial, before the court of circuit, on a charge of manslaughter, or other culpable homicide, the party shall be held to bail for appearance before the court of circuit; but the magistrate is authorized to release the accused, if the homicide in which he may appear to have been concerned, shall, from the whole of the evidence, be clearly shown to have been accidental or justifiable, under the Mohum-

<sup>1</sup> The sentiments of the nizamat adawlut on the necessity of modifying the rules here mentioned, whereby prisoners committed, or held to bail, for trial before the courts of circuit, are enabled to cause the attendance of any number of witnesses whom they may name in their defence, were also stated in par. 223, and 224, of the letter referred to in the preceding note; which contains the report of the nizamat adawlut on various arrangements in the judicial department, suggested in a letter from the Honorable Court of Directors, dated the 9th November, 1814.

<sup>2</sup> This offence is omitted in Regulation 9, 1793, for Bengal, Behar, and Orissa; but being included in the subsequent regulations for Benares and the ceded provinces, it is evident that the omission was accidental. In answer to a question respecting the discretion left to the magistrates in cases not expressly declared bailable, or excepted from bail, by the regulations, the court of nizamat adawlut stated their opinion, that the magistrates have a discretionary authority in such cases; but that in the exercise of it they should be guided by the spirit of the rules prescribed, for receiving bail or not, in cases of a similar nature.

mudan law and regulations. The principle of the preceding clause is also declared applicable to persons appearing, from the magistrate's enquiry, to have been only privy, or incidentally accessory, to crimes of a heinous nature, without being concerned therein, either as principals, or as aiding and abetting, procuring or instigating, the perpetration thereof; and in all cases, whether of trial before the magistrate, or before the court of circuit, if the admission of bail have not been prohibited by the regulations, and the bail tendered shall appear sufficient for securing the appearance of the party accused, he shall be admitted to bail, until sentence be passed upon the charge against him. Moreover, in special instances, wherein the court of circuit, on a report from the magistrate, or on other satisfactory information before them, may deem it just and proper to admit to bail a person charged with an offence not bailable under the general provisions contained in the regulations, that court is declared competent to instruct the magistrate to accept sufficient bail, instead of keeping the accused in confinement, whilst the charge against him is under trial. The court of circuit may likewise, in all bailable cases, wherein the bail required by the magistrate shall appear excessive, direct the magistrate to receive such bail as may be deemed sufficient to answer the purpose intended by it." Section 10, of the regulation last mentioned, also prescribes the form of bail-bond to be taken, in all cases, from persons held to bail for trial before the courts of circuit.<sup>1</sup> If a magistrate commit any zemindar, independent talookdar, or other actual proprietor of land,<sup>2</sup> to be tried before the court of circuit, "he is to notify the commitment to the collector of the district, that, if necessary, he may take measures to prevent any delay in the payment of the public revenue assessed upon the lands of the offender."

In cases of persons only privy, or incidentally accessory, to crimes of a heinous nature.

General rule, if the admission of bail have not been prohibited by the regulations.

Special rule for admission of bail, by order of the court of circuit, in cases declared not bailable by the regulations.

Courts of circuit may also reduce the bail required by magistrates, if excessive.

R. 9, 1807, § 10. Form of bail-bond to be taken from persons held to bail for trial before the courts of circuit.

R. 9, 1793, § 18, and R. 6, 1803, § 18.

Commitment of landholders to be notified to collectors.

<sup>1</sup> It is as follows:—"Whereas \_\_\_\_\_, inhabitant of \_\_\_\_\_, stands charged with \_\_\_\_\_, and has been admitted to bail by the magistrate of \_\_\_\_\_, on condition of his appearance, to stand his trial on the said charge, before the court of circuit for the division of \_\_\_\_\_, I hereby bind myself to produce the said \_\_\_\_\_ before the said court of circuit at their next session for the zillah (or city) of \_\_\_\_\_, on the date whereupon his appearance may be required, either by a general proclamation, or by a special notice, from the magistrate, and to be answerable for his appearance before the court of circuit, until a final sentence be passed upon the said charge; in default whereof, I further bind myself to forfeit to Government, the sum of rupees \_\_\_\_\_; in this I will not fail. Dated \_\_\_\_\_."

It appearing to have been the practice of some of the magistrates to confine in fetters all persons ordered for trial before the courts of circuit, and not admitted to bail, or unable to give the bail required from them; whatever might be their situation in life, or the nature of the offence charged against them; the courts of circuit were instructed by the nizamat adawlut, on the 4th January, 1805, to notify to the magistrates of their respective divisions, "that such practice, with respect to persons charged with offences not of a heinous nature, or who may be committed to prison from inability to find sufficient bail, being unnecessary to secure their appearance at the time of trial (the only object of personal custody in such cases) and it being the evident intention of the regulations that no prisoner, before he is brought to trial, should suffer more corporal restraint, or personal ignominy, than are unavoidable for his safe custody and appearance at the time of trial; they are required to be careful in observing this principle; and consequently are not to confine in fetters any person for trial before the court of circuit, who may be charged with a bailable offence, and committed to prison from inability to find bail; or who, though not admitted to bail, may not have been charged with an heinous offence; such as, from the nature and circumstances of the case, considered with the prisoner's condition of life, may appear to render the use of irons indispensably requisite for his secure custody."

<sup>2</sup> Proprietors of land, *paying revenue to Government*, appear to be intended by the rule stated; the object of which also extends to sudder farmers, answerable for any part of the public revenue.



R. 9, 1793, § 11, extended to Benares by R. 16, 1795, § 4; re enacted for ceded provinces by R. 6, 1804, § 11. Publication to be issued on notice of expected arrival of the court of circuit.

R. 9, 1793, § 13, 14; and R. 6, 1803, § 13, 14. Calendar of persons committed, or held to bail, for trial before the court of circuit, to be submitted to that court, with the magistrate's proceedings on each charge and all relative documents.

R. 9, 1796, § 4, and R. 6, 1803, § 11.

Also returns to summonses of absent witnesses.

R. 9, 1793, § 17, R. 6, 1803, § 17, and R. 9, 1807, § 22.

Further calendars to be submitted by magistrates.

2. Of persons discharged from want of evidence.

3. Of persons tried for offences cognizable by the magistrate and his assistant.

4. A fourth calendar of prisoners under examination, required by R. 6, 1816, § 2.

The magistrates, on receiving notice from the judges of the courts of circuit, of the time by which they expect to arrive at their respective stations, are to issue a written publication, requiring, by a fixed date, the attendance of all persons admitted to bail, for trial before the court of circuit, as well as of all prosecutors and witnesses bound over to appear before that court; under penalty of forfeiting their recognizances. A copy of this publication is to be sent to the *Kázee* of each *pergunnah*; and to be fixed up, in some public place, in the principal town or village of each *pergunnah*: or, in the principal cities, at the offices of the *cutwal*, and *darogahs* of wards. On the arrival of the judges of circuit, the magistrates are to deliver to them an English and Persian calendar of the prisoners committed, or held to bail, to take their trial before the court of circuit; prepared in a prescribed form; and specifying, besides the names of the prosecutors and prisoners, a brief statement of the charge and when preferred; the date on which each prisoner was apprehended; the names of the witnesses; and an abstract of proceedings, stating on what grounds and date the prisoners were committed, or held to bail, for trial before the court of circuit. This calendar is to be accompanied with the magistrate's proceedings on each charge; and all material documents relative thereto. To furnish the courts of circuit with the fullest information on the non-attendance of any absent witness, and to enable them to ascertain that all due measures have been taken to cause the attendance of the whole of the witnesses named by the prosecutors and prisoners, it is further directed, that the original returns made to the magistrate, by the *nazir*, and person deputed on his part to serve the summons upon any witness not in attendance, be submitted to the court of circuit, with the calendar abovementioned; and that the *nazir*, and person so deputed, be kept in attendance to answer any interrogatories which the court may judge it necessary to put to them.<sup>1</sup> The magistrates are also to lay before the judges of circuit, with their proceedings and all original papers relative thereto, a second calendar of persons apprehended by them, upon charges cognizable by the court of circuit, but discharged, from want of evidence, since the preceding session; and a third calendar, of persons tried for crimes or misdemeanors cognizable by themselves, and their assistants; specifying the charge against each prisoner, and the sentence passed thereupon. They are further required, by Section 2, of Regulation 6, 1816, "to submit to the judges of circuit, at the commencement of each jail delivery, a calendar of persons in confinement on criminal charges still under examination; containing the following particulars; viz. the name of each prisoner; the date of his apprehension;

<sup>1</sup> The following additional rule is prescribed in Section 4, of Regulation 6, 1816. "First. Whenever a person held to bail for his appearance before a court of circuit shall neglect to attend at the appointed time, the magistrate shall call upon his surety, or sureties, to produce him; and on their failure, shall report the case, with any reasons assigned by the surety, or sureties, for the non-fulfilment of their engagement, to the judge of circuit holding the session of jail delivery, who will determine, and instruct the magistrate, whether the penalty of the security bond shall be immediately enforced; or whether a further time shall be allowed to the surety, or sureties, to produce the person for whom they are responsible. Second. When the judge of circuit, on consideration of the magistrate's report, shall direct the enforcement of the security bond, the magistrate shall proceed to recover the amount of the penalty from the surety, or sureties, by the attachment and sale of any property belonging to them, in the mode prescribed for the attachment and sale of property, in satisfaction of decrees of the civil courts; or if the amount demandable from the surety, or sureties, be not paid, and cannot be realized from any property belonging to them, they shall be liable to confinement, by order of the magistrate, in the civil jail of the station, during a period not exceeding six months."

the charge against him ; by whom preferred ; and what proceedings have been held in the case ; with an explanation of the cause of delay in passing a final order, if the prisoner have been more than a month in confinement."

On the 1st November, 1804, the magistrates were instructed, by a circular order from the nizamat adawlut " to lay before the judge of circuit, at each jail-delivery, a report of all persons confined by order of the magistrate, on account of suspicion, or bad character, or vagrancy, or on any other ground, until they find security for their good behaviour." And on the 8th August, 1807, they were further directed to distinguish in such reports, " the names of prisoners who have been confined more than six months, without confirmation of the magistrate's order by the court of circuit ; submitting, at the same time, an abstract statement, in Persian or English, specifying the names of the prisoners, the period of their confinement, and the circumstances of each case ;" together with their proceedings on the commitment, and security required. The court of nizamat adawlut added, that " the judge of circuit, under the powers vested in him by Regulation 9, 1807, after inspecting the proceedings, and making any further inquiry deemed necessary, will pass such order as may appear just and proper ; either for the release of the prisoner on his Moochulka, or for reducing the amount of security required (if this appear excessive) ; or for the further detention of the prisoner until he give the security required : and, in the latter case, the prisoner should not afterwards be released without security, unless authorized by the court of circuit, on report of the magistrate, under the provisions of Section 11, Regulation 53, 1803." The section here referred to is as follows :—  
*"First.* In the cases of suspicion or bad character, referred to in Clause Sixth, Section 2, of this regulation, wherein the courts of circuit may direct the zillah or city magistrates to detain prisoners in custody until they give sufficient security for their future good behaviour and appearance, when required ; as well as in any similar cases wherein the like directions may be given by the court of nizamat adawlut ; if any prisoner shall have remained in confinement for a year, or any longer period, under inability to give the security required ; and the execution of a Moochulka (penal engagement) by the prisoner for his future good conduct, without security, may, on consideration of the circumstances of the case, and the prisoner's behaviour during his confinement, appear to the magistrate sufficient to provide for the object intended ; he shall report the same to the court of circuit at the next ensuing jail delivery, for the zillah or city, in which such prisoner may be detained in custody. *Second.* In all cases of such reports being made by the zillah or city magistrates to the courts of circuit, the judges of the latter are to call the prisoner before them, and to examine the proceedings held upon his trial, as far as may be necessary to ascertain the grounds on which the prisoner may have been required to find security ; after which, and duly considering the circumstances stated in the magistrate's report, if they shall concur with the latter in opinion that the prisoner ought to be released, on his Moochulka, without security, they are to direct the same accordingly. *Third.* In the exercise of this discretion, the magistrates and courts of circuit, will of course give due consideration to the nature of the crime, of which the prisoner may have been convicted, or suspected ; his general character, as far as ascertainable ; and the consequent risk to be apprehended from his being released without security for his future good conduct."

The object of the above section, and of the instructions of the nizamat adawlut, above quoted, has however been more fully provided for, by the following enactments in Regulation 8, 1818 ; which may be stated in this place, as defining the powers to be exercised, in the requisition of security for

Report of persons confined, by order of magistrate, till they find security for good behaviour, to be laid before judge of circuit, at each jail delivery.

Judge of circuit how to proceed on such report.

R-53, 1803, § 11. Provision for the cases of prisoners required by the courts of circuit or nizamat adawlut, to give security for their future good behaviour and appearance ; and who may be unable to find such security ; but, from then behaviour whilst in confinement, and other circumstances, may appear to the magistrates proper objects of release without security ; under a penal engagement for their future good conduct. Courts of circuit how to proceed on receiving such reports. Considerations to be attended to, in the exercise of the discretion given by this section.

Object of above section, and of instructions of nizamat adawlut, more fully provided for by

the following enactments in K. 8, 1818.

Section 2.  
Part of Clause Sixth, Section 2, Reg. 53, 1803, rescinded.

The courts of circuit and the nizamut adawlut authorized to require security from prisoners tried by them, if proved to be of notoriously bad or dangerous character.

Section 3.  
Nature of the order to be passed by the criminal courts on requiring security for good behaviour, from persons of notoriously bad character.

Section 4.  
Period of time for the eventual detention of such prisoners, to be fixed.

Exception.  
Section 5.  
Magistrates empowered to release such prisoners, although the security be not furnished, if the order of detention shall have been passed by persons exercising the functions of magistrate.

But not to exercise that authority if the order shall have been passed by the courts of circuit or by the nizamut adawlut.

Section 6.  
Limitation with regard to the removal of prisoners, confined for security, from one district to another.

Exceptions to the foregoing rule.

Section 7.  
On what conditions sureties may be discharged from their responsibility.

good behaviour, as well by the zillah and city magistrates, as by the courts of circuit and nizamut adawlut.

§ 2. "*First.* Such part of Clause Sixth, Section 2, Regulation 53, 1803, as vests the courts of circuit with authority to require security for good behaviour from persons charged with, but not convicted of, a specific offence, on the grounds of strong suspicion of their having committed such offence, independently of any proof of notorious bad character, is hereby rescinded; and the criminal courts are prohibited from requiring security for good behaviour from such persons, in future. *Second.* The foregoing rule shall not be construed to prevent the judges of the courts of circuit, or of the nizamut adawlut, from requiring security from prisoners, who may be acquitted, on the trial before those courts, of the specific charge brought against them, provided such prisoners may, from the evidence on the proceedings, appear to be of notoriously bad or dangerous character. In cases of this description, the judges of the courts of circuit, or of the nizamut adawlut, will issue such orders as they may judge necessary, under the rules contained in Sections 9 and 10, of this regulation." § 3. "In every instance in which security for good behaviour may be hereafter required, whether by the magistrates, the courts of circuit, or the nizamut adawlut, the amount of the security, the number of sureties (to be fixed at the discretion of the magistrate or of the court requiring the security) and the period of time for which the sureties are to be responsible for the good conduct of the prisoner, shall be fixed and determined." § 4. "The period of time during which such prisoners may be made liable to detention in custody, on failure to furnish the security required from them, shall hereafter be specifically fixed in every instance, except in those cases in which the prisoner may appear to be a notorious robber, of a character so dangerous as to render his release, without security, evidently unsafe and objectionable." § 5. "*First.* The magistrates are hereby empowered, at all times, to exercise their discretion in releasing, without reference to any other authority, prisoners confined under requisition of security for their good behaviour, whether by their own orders or by those of any other person discharging the functions of a magistrate; provided the magistrates shall, from whatever cause, be of opinion that such prisoners can be released without hazard to the community. *Second.* In cases in which a magistrate may, for whatever reason, be of opinion that any prisoner confined under requisition of security, for good behaviour, by order of a court of circuit or of the nizamut adawlut, can be safely released without such security, the magistrate shall either bring the case before the court of circuit at the next ensuing jail delivery, as prescribed in Section 11, Regulation 53, 1803, or shall make an immediate report of the case, with his sentiments, for the orders of the court, which may have required the prisoner to furnish security previously to his release." § 6. "*First.* No prisoner detained under requisition of security, in the zillah or city in which he has been accustomed to reside, or in which he may have been apprehended, shall be removed to the jail of a different zillah, unless the nizamut adawlut shall sanction the removal in compliance with the prisoner's own request, and with a view to enable him the more easily to furnish the security required. *Second.* The foregoing rule, however, shall not be construed to preclude the removal of such prisoners from one station to another, in cases in which a due regard to the health of the prisoners or to their safe custody, or other emergent circumstances, may, in the judgment of the nizamut adawlut, render that measure necessary or advisable." § 7. "It is hereby declared, that individuals who may become sureties for the good behaviour of prisoners, may, at all times, obtain a discharge from their future responsibility, by delivering up, or causing to be delivered up, the persons for whom they may have become responsible, to the

proper magistrate or police officer ; and that they will not be made responsible for the amount of the security-bond, in cases in which they may give timely information to the magistrate, that the individuals, for whom they may have become sureties, have taken to bad courses, and may use every exertion in their power, to the satisfaction of the magistrate, for the apprehension and surrender of such individuals." § 8. "*First*. Whenever the magistrates, under the authority vested in them by the existing regulations, may require security for the good behaviour of a prisoner, they shall (in all cases in which they may judge it safe to do so) provide, in their order, for the release of the prisoner, at the end of a definite period, not exceeding twelve months. *Second*. It shall not be necessary for the judge of circuit, holding the sessions, to revise the proceedings of the magistrate in such cases, except on petitions presented by the prisoners, when the judge of circuit holding the sessions is directed and empowered to call for the proceedings, and, on his own authority, to annul, modify, or confirm, the orders of the magistrate." § 9. "*First*. In all other cases, in which the magistrate may be of opinion, from the evidence to general character adduced before him, that the prisoner is, by habit, a robber, burglar, or thief, or a vender or receiver of stolen property, knowing the same to have been stolen ; of a character so desperate, dangerous, or irreclaimable, as to render his release, without security, at the expiration of the limited period of twelve months above specified, hazardous to the community, the magistrate shall record his opinion to that effect, with an order, specifying the amount of security which should, in his judgment, be required from the prisoner, as well as the number of sureties, and the period for which the sureties should be responsible for the prisoner's good behaviour. *Second*. If the prisoner shall not furnish the security so required, before the next sessions of the court of circuit, the whole of the proceedings shall be laid before the judge of that court, who, after examining them and requiring any further evidence which he may judge necessary, shall be competent from his own authority, to pass orders on the case, either confirming, modifying, or annulling the orders of the magistrate, as he may judge proper and equitable. *Third*. In all such cases, if the judge of circuit shall not think it safe to direct the immediate discharge of the prisoner, he shall fix a limited period for the provisional detention of the prisoner (in the event of his not giving the security required from him) which period shall never exceed three years, except in the cases specified in the following section." § 10. "*First*. In cases in which the judge of circuit shall, from the proceedings before him, consider the prisoner to be a notorious gang robber, (Dukyts) of dangerous character, whom it would be unsafe to set at liberty, without substantial security for his future good behaviour, and who, therefore, in default of giving such security, should be confined indefinitely, in pursuance of Section 9, Regulation 8, 1808, he shall declare and order the same accordingly.' *Second*. In these cases, however, the judge of circuit shall nevertheless fix the amount of the security to be required from the prisoner, and shall provide in his order, that, if the prisoner shall not be able to furnish the security required, within the period of three years from the date of such order, the prisoner in question shall be again brought up before the judge of circuit, who may hold the sessions of jail delivery immediately following the expiration of the period of three years above specified, whose duty it will be, after examining the proceedings and making any further inquiries he may judge necessary, to determine whether the prisoner shall then

Section 8.  
The period  
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The judge o  
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Section 9.  
Magistrates  
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Section 10.  
Orders to b  
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robber.

Further prov  
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cases.

<sup>1</sup> By Section 2, of R. 3, 1819, the provisions of this section are declared applicable "not merely to gang-robbers (Dukyts) but also to other notorious robbers, of whatever denomination, being of desperate or dangerous character, whom it would be unsafe to set at liberty without substantial security for their future good behaviour."

Rules to encourage respectable individuals to become sureties for such prisoners.

be released, or whether he shall be again remanded, either on the same terms as before, or on any modified terms, favorable to the prisoner. *Third.* With a view to encourage respectable individuals to become sureties for prisoners of the description alluded to in the foregoing clauses of this section, the period for which the sureties are to be responsible for the good behaviour of the individuals, shall be, in all cases, limited to three years, subject however to the condition that the sureties, at the expiration of that period, shall be bound to deliver up the individuals to the magistrate. *Fourth.* When individuals shall be surrendered by their sureties, under the foregoing rule, the magistrates shall ascertain whether the former surety is willing again to become responsible for the future good behaviour of the prisoner, for a further period not exceeding three years, and, in the event of the surety being willing to become again responsible for the conduct of the prisoner, the magistrate shall accept the security, and release the prisoner, on the same terms as before. *Fifth.* If the former surety shall decline to become again responsible for the prisoner, and the prisoner shall be unable to furnish any other sufficient security, the magistrate shall detain him in custody until the ensuing sessions, when the prisoner is again to be brought before the judge of circuit, for such further orders as he may consider it proper to pass in the case." § 11. *First.* Although the cautious and discreet application

Section 11.  
A revision of the cases of prisoners now detained in confinement, for security, to be undertaken.

The Governor General in Council may appoint individuals for the special duty of making such revision. Such officers to proceed to the sudder stations of the several districts. To what cases the revision in question is to extend.

of the powers vested in the judicial officers, under the foregoing provisions, will tend, in future, to reconcile effectually the safety of the community, with a due regard to the rights of individuals, those rules will not operate to relieve the prisoners, now in confinement, under a requisition of security, unless a general revision of their cases be undertaken with reference to the same principles; and the following rules are accordingly enacted to provide for such revision. *Second.* It shall be competent to the Governor General in Council to nominate and appoint such individuals, (being officers of experience in the judicial department,) as he may, from time to time, judge proper to select, for the special duty of revising the cases of prisoners in confinement, under requisition of security. *Third.* It shall be the duty of those officers to proceed to the sudder stations of the several districts or cities in which the prisoners, whose cases they are respectively to revise, may be confined. *Fourth.* The revision in question shall extend, 1st, to the cases of all prisoners who may be now detained in confinement, under requisition of security, by orders of the nizamat adawlut and courts of circuit, merely on the ground of strong suspicion of their having committed a specific offence, without proof of their notorious bad character. *2ndly.* To the cases of all prisoners ordered, by whatever authority, to be imprisoned for an indefinite period, until they find security. *3rdly.* To the cases of all prisoners ordered, by whatever authority, to be imprisoned for a definite period, on failure to furnish security for their good behaviour, provided the amount of the security, and the period for which the sureties are to be responsible, be not distinctly specified in the order, and provided that the unexpired period, during which the prisoners may be still liable to be detained, shall exceed three years." § 12. "All prisoners whose cases may be included under the first of the foregoing heads, shall be discharged, unless it shall appear, from the proceedings, that the prisoner is a person, who, from the notoriety of his general bad character, ought not to be released without security: in these cases, as well as in the cases included under the second and third heads, the officer, making the revision, shall be guided by the general principles prescribed in this regulation; and shall pass such orders as he may judge proper, in each case, under the rules contained in Sections 9 and 10, of this regulation." § 13. "The persons who may be nominated by Government, for the discharge of this special duty, are hereby vested with full authority to release prisoners confined for security, to di-

Section 12.  
The revision to be conducted with reference to the general principles prescribed by this regulation.

Section 13.  
The orders of persons appointed to make the re-

minish the amount of the security, to shorten the periods fixed for the discharge of the prisoners, and generally, to pass any orders favorable to such prisoners, which they may judge proper in the exercise of a sound and humane discretion, and their orders shall not be subject to appeal, or to the revision of any other authority, except in instances in which their orders may appear, to the nizamat adawlut not to be warranted by the powers vested in them by this regulation." § 14. "The officers who may be nominated by Government, for the discharge of the special duty above adverted to, shall submit a report, showing the result of their proceedings in each district, through the nizamat adawlut, for the information of Government, accompanied by such forms and statements as may be prescribed by the nizamat adawlut."

The magistrate is required by Section 20, of Regulation 9, 1793, (extended to Benares by Regulation 16, 1795, and re-enacted for the ceded provinces by Section 20, of Regulation 6, 1803,) "to visit the jail at least once in every month; and redress all well founded complaints of ill treatment, which may be preferred to him by the prisoners against the jailor, or any officers having charge of them." He is also directed "to be particularly attentive to the health and cleanliness of the prisoners; and to see that the surgeon of the station attends and administers to the sick." It is further provided in Section 21, of each of the regulations abovementioned, that separate apartments in the jail are to be allotted for the different descriptions of prisoners; as well as to divide the male from the female prisoners; and the magistrates "are enjoined to endeavour to prevent drunkenness, gaming, and other immoralities, from being practised, in their respective jails." On the 8th February, 1811, general rules for the better management of the public jails, were, at the suggestion of the court of nizamat adawlut, passed by the Governor General in Council; and after being printed, were circulated to the magistrates, by order of the court, on the 14th March, 1811. Circular instructions to the zillah and city magistrates, on the *treatment of prisoners in public jails and hospitals, with rules to be observed on their discharge*, were also issued by the nizamat adawlut on the 4th January, 1805, 17th April, 1810, 22d August, 1811, 21st August, 1812, 11th March, 1813, 6th July, 1814, and 1st March, 1815; as detailed under the head abovementioned, in the printed collection of *circular orders passed by the nizamat adawlut*. Further instructions are contained in the same collection, under the head *Employment of convicts and of prisoners detained for security*, as well as that of *Escape of prisoners*; and numbers 14, 21, 27, 28, 30, under the head of *Reports*, prescribe reports on the health of the prisoners at each station to be furnished by the surgeon, at the periodical sessions of jail delivery, as well as quarterly, in the months of March, June, September, and December, for the information of the courts of circuit, and nizamat adawlut, No. 27 likewise directs a quarterly return of the sick, according to a form received from the medical board, to be forwarded to that board, by the surgeon, at all the civil stations where there are jails, through the superintending surgeon of the district: and with No. 28, the magistrates were furnished with forms of daily reports, for the jail and hospital, to be made by the jailor and native doctor, for their own information of the actual state of the prisoners under their charge from day to day; as well as to check abuses, and become a useful record of office. It does not appear requisite to specify the printed rules above noticed, more particularly in this place: but it is necessary to state at length the provisions of Regulation 14, 1816, "entitled, "A regulation to provide more effectually for the management of the public jails; and to enable the magistrates to maintain good order and discipline in these jails; as well as among the prisoners employed

vision not subject to appeal, or to the revision of other authorities. Unless unwarranted by this regulation.

Section 14. Report, to be submitted, through nizamat adawlut, for the information of Government.

R. 9, 1793, § 20. 21, extended to Benares by R. 16, 1795, and re-enacted for the ceded provinces by R. 6, 1803. § 20, 21. Directions to magistrates relative to jails, and care of prisoners, at their respective stations.

Rules for the management of public jails passed by the Governor General in Council on the 8th February, 1811. Circular instructions of the nizamat adawlut, relative to the treatment of prisoners in public jails, and hospitals. As well as respecting employment of convicts: and of prisoners detained for security. And regarding escape of prisoners. Reports on the health of prisoners to be furnished by the surgeon. Daily reports of the jail and hospital, to be furnished by the jailor and native doctor.

Preamble to  
R. 14, 1816.

on the public roads, or other public works. Also to place the jail at Allypore in the vicinity of Calcutta, under the inspection and control of the court of nizamat adawlut." The preamble to this regulation is as follows: "Whereas rules for the better management of the public jails have been prescribed at different times, by the Governor General in Council, and court of nizamat adawlut; and it is advisable to provide by a regulation for the due observance of such rules, as well as of any future rules, which may be sanctioned by Government for the same purpose, or for the treatment of prisoners employed on the public roads or other public works; and whereas it is necessary to vest the magistrates with authority to punish certain offences, when committed by prisoners under their charge or by the native officers employed in the custody of prisoners, who may not be subject to a military tribunal, with a view to maintain good order and discipline in the public jails, and other authorized places of confinement; and to enforce a due observance of the prescribed rules for the employment of prisoners; and whereas it is judged expedient to place the jail at Allypore in the vicinity of Calcutta, being the general receptacle of convicts under sentences of perpetual imprisonment and transportation, as well as of convicts sentenced to temporary imprisonment and banishment, under the immediate inspection and control of the court of nizamat adawlut; the following rules have been enacted for the several purposes aforesaid, and shall be considered in force, from the time of their promulgation, throughout the several provinces immediately subject to this presidency." § 2. "The magistrates and their officers, who have charge of the public jails, shall be guided by the printed rules which have been prescribed by the Governor General in Council, or court of nizamat adawlut, for the better management of those jails, and by such rules for the same purpose, as may be hereafter sanctioned by the Governor General in Council, and transmitted for the guidance of the magistrates by the court of nizamat adawlut." § 3. "The magistrates who have charge of prisoners employed on the public roads, or on other public works, shall in like manner be guided by any rules, for the treatment of such prisoners, which have been, or may be hereafter transmitted to them by the court of nizamat adawlut, with the sanction of Government." § 4. "For the purpose of enabling the magistrates to maintain good order and discipline among the prisoners confined in the public jails, or other authorized places of confinement, and to enforce a due observance of the prescribed rules by the employment of the prisoners under their charge; they are hereby vested with authority to punish, on a summary enquiry, the offences specified in the following section of this regulation." § 5. "*First.* A contumacious refusal to work, by any prisoner sentenced to hard labor, or though not so sentenced, who may be subject to labor, under any provision in the regulations; or under the discretion declared to be vested in the magistrate by the orders of the court of nizamat adawlut, with respect to prisoners not exempted from labor by the sentences of the criminal courts; and not incapable of bodily labor from age, sickness, or other infirmity. *Second.* Wilful neglect and indolence in the performance of any prescribed work, by a prisoner subject to labor, as described in the above clause; especially after previous admonition. *Third.* Wilful disobedience to any of the written rules for the observance of prisoners, and internal economy of a public jail, which may have been translated into the current language of the country, and suspended on a board, within the jail, for general information, as directed in the printed jail rules now in force. *Fourth.* Refractory behaviour by prisoners; such as resistance to the jailor, guards, or other public officers, in the regular discharge of their proper functions; abusive language to any such officers; and generally any culpable behaviour towards them, which may not involve a serious act of criminality,

Section 2.  
By what rules,  
for the management  
of public jails,  
the magistrates to be  
guided.

Section 3.  
And by what  
rules, for the  
treatment of  
prisoners employed  
on the public roads,  
or other public  
works.

Section 4.  
Magistrates  
authorized to  
punish certain  
offences, committed  
by prisoners, on a  
summary inquiry.

Section 5.  
Specification  
of offences  
which the magistrates  
are empowered to  
punish, under  
the preceding  
section.

such as cannot be duly punished by the magistrates, and should therefore be brought before the court of circuit. *Fifth.* Any other instance of disorderly conduct by a prisoner; such as riot, insurrection, attempt to escape, taking off or loosening or attempting to loosen, by filing, cutting, or otherwise, his own irons, or those of other prisoners, with a view to escape; conspiring with other prisoners for the purpose of insurrection or escape, or for any other criminal purpose; abusing or assaulting another prisoner, and generally any misconduct, committed by a prisoner, whilst in custody, which, under the regulations in force, or from its aggravated nature, may not exceed the competency of the magistrate, and therefore be more properly cognizable by the court of circuit." § 6. "*First.* The powers vested in the magistrates for the punishment of the offences specified in the preceding section, which, on a summary inquiry, may appear to have been committed by any of the prisoners under their charge, are declared to be as follows; due regard being had to the nature of the offence, the condition of the prisoner, and every other just consideration applicable to the case. *Second.* In cases of a contumacious refusal to work, or of wilful neglect and indolence in the performance of any prescribed work, within the first or second clause of Section 5 of this Regulation, the magistrate may cause the prisoner to be moderately corrected with a rattan; and in the instance of a prisoner's pertinaciously refusing to work, may likewise order his diet allowance to be reduced, in such degree as may be consistent with his support, until he shall perform the work required from him. *Third.* The offences specified in the third, fourth, and fifth clauses of the preceding section, shall be punishable, according to the nature and circumstances of the case, by stripes with a rattan, not exceeding the general limitation prescribed for this mode of punishment by a magistrate, viz. thirty rattans, or by close, and as far as practicable, by solitary confinement; or when a prisoner may have attempted to escape, by the substitution of heavy fetters, for those in ordinary use, which are directed by the jail rules to be of a light and uniform construction; by the temporary addition of neck-chains, of a moderate weight, when the prisoner may have been refractory, or turbulent, or guilty of any act of violence; and in aggravated or emergent cases of this nature, by the further restraint of handcuffs, whilst such restraint, which is never to be imposed without necessity, shall appear to be requisite for the safeguard of the prisoner, or to prevent his doing mischief to others." § 7. "The powers declared to be vested in magistrates by this Regulation may, of course, be exercised by joint magistrates, and assistant magistrates, who are not stationed at the same place with the zillah or city magistrates, and who, under the general regulations, are invested with the authority of magistrates; with respect to prisoners under their immediate charge. The zillah and city magistrates are further empowered to refer to their assistants at the sudder stations, any cases, within the provisions of this regulation; observing the rule prescribed in Section 21, Regulation 9, 1807; viz. that the order of reference direct, whether the assistant is to submit his proceedings for the magistrate's decision, or to pass his own determination on the case referred to him. If the assistant be authorized to determine the case referred to him, he is empowered to pass the same order as might have been passed by the magistrate, but his decision will be open to revision by the magistrate, if the latter see cause for it, as provided in the section above cited, with respect to all judgments passed by the assistant to a magistrate, who is not vested with the full powers of magistrate." § 8. "It shall not be necessary to make a detailed record of the evidence, or of any part of the proceedings held in the summary inquiries authorized by this regulation; nor shall it be requisite to examine witnesses upon oath, except in cases of a serious nature, involving offences specifically provided for by the general

Section 6.  
In what manner and to what extent, the magistrates may punish the offences specified.  
Contumacious refusal to work, or wilful neglect, and indolence in the performance of any prescribed work, how punishable.  
What punishment may be inflicted for the offences specified in the third, fourth, and fifth clauses of the preceding section.

Section 7.  
Powers declared to be vested in magistrates may be exercised by joint magistrates, and by assistant magistrates, not stationed at the same place with the zillah and city magistrates.  
The magistrates may also refer any cases to their assistants at the sudder stations.  
Rule to be observed in such references.  
In what case the assistant may exercise the same powers as the magistrate.  
Section 8.  
What record to be kept of the summary inquiries, and convictions, provided for by this regulation.



The authenticated record to be ready for inspection of the judge of circuit who may visit the jail at the ensuing jail delivery.

Judge of circuit, how to proceed, if he disapprove the order of the magistrate, or his assistant.

Section 9. Provision for the punishment of watchmen, guilty of gross neglect or misconduct, in the discharge of duty, contained in Section 6, R. 3, 1812, extended to burkundazes, pykes, and other inferior officers, attached to a public jail, or employed in the charge of prisoners; or generally in the performance of any public duty under a magistrate, police darogah, or other person in charge of the police.

Magistrates to prevent any maltreatment of prisoners by the native officers having charge of them.

Complaints of prisoners to be immediately inquired into. And how redressed, if proved to be well founded. The two foregoing clauses not applicable to military guards, or any persons subject to a military tribunal. Section 10, R. 11, 1806, to be observed, as heretofore, in cases of neglect, or other misconduct, by such persons.

rules in force for the administration of criminal justice. But a record shall be kept of every summary conviction, and punishment; stating the name of the prisoner, the offence charged against him, the substance of the evidence and conviction; or the magistrate's personal view when the facts of the case may have taken place within his view; and the punishment ordered, with the date of the order, to be signed by the public officer by whom it may be passed. The record so authenticated shall be kept ready for the inspection of the judge of circuit on his visiting the jail at the ensuing jail delivery; that a reference may be made to it in the event of any complaints being preferred by the prisoners. Should the judge of circuit see cause to disapprove the order of a magistrate, or his assistant, in any instance, he will notice the same to the magistrate, with any instructions which may appear necessary, and may be consistent with the regulations in force; or if the magistrate, or his assistant, appear in any instance to have been guilty of any gross neglect, or other misconduct, such as is required to be reported to the nizamat adawlut, by Section 63, Regulation 9, 1793, and Section 30, Regulation 7, 1803, or by any other regulation in force, the judge of circuit, after calling for any requisite explanation, shall report the same accordingly."

§ 9. "First. Section 6, Regulation 3, 1812, whereby all descriptions of watchmen subject to a cutwal or darogah of police, who may be proved guilty of gross neglect, or misconduct, in the discharge of their duty, are made liable to corporal punishment, not exceeding thirty stripes of a rattan, by sentence of the local magistrate, instead of fine or imprisonment, when the offender may appear a fit object of corporal punishment by stripes, and the magistrate shall be of opinion, that the infliction thereof will operate as a better example than the penalty of fine, or imprisonment, is hereby extended, under the same provisions and restrictions, to instances of gross neglect, or misconduct, in the discharge of their respective duties, which may be established against any burkundaze, pyke, or other inferior officer, attached to a public jail, or employed in the charge of prisoners; or generally in the performance of any public duty, under a magistrate, police darogah, or other person in charge of the police. *Second.* The magistrates shall be careful to prevent any maltreatment of prisoners, by any of the native officers attached to their respective jails, or in charge of prisoners employed on the public roads. All complaints of prisoners, against the officers having charge of them, shall be immediately inquired into by the magistrates; and if proved to be well founded, the offenders shall be liable to immediate dismissal; besides a fine, not exceeding one month's salary; or imprisonment not exceeding six months; or when the offender may be a burkundaze, pyke, or other inferior officer, to corporal punishment with a rattan, in pursuance of the rule contained in the preceding clause. *Third.* It is not of course intended that the two foregoing clauses of this section should be considered applicable to any military guards, sepoy, or officers, or to persons of any denomination, who are subject to a military tribunal. In the event of any such persons being guilty of a neglect of duty, or other misconduct, involving an offence cognizable by a court martial, whilst employed in the custody of prisoners, the magistrate will continue to observe the rule prescribed for such cases in Section 10, Regulation 11, 1806."

§ 10. "First. If any convict, <sup>1</sup> The rule here noticed is in addition to Section 6, R. 2, 1799, which provided that "all guards of whatever description, having the custody of convicts who escape, and who may appear, on the magistrate's inquiry, to have been guilty of wilful neglect, are to be immediately dismissed from the public service; and should any connivance or further criminality appear against them, are to be committed, or held to bail, according to the circumstances of the case, for trial before the court of circuit; that on

under sentence of imprisonment, shall, from his uniform good behaviour, and industrious performance of the work assigned to him, or from his meritorious conduct in preventing the escape of other prisoners, or rendering any other public service, appear to the magistrate, having charge of him, to deserve a remission of the further punishment to which he may be liable under his sentence; or of any part of it; a report of the circumstances of the case, with a copy of the sentence passed upon the prisoner, shall be transmitted by the magistrate to the court of nizamat adawlut; who are hereby declared empowered (except in cases of prisoners of State, which shall be reported for the orders of Government, in conformity with the principle of Section 3, Regulation 14, 1810) to remit the further punishment adjudged against the prisoner, in whole or in part, if there appear to be sufficient cause for it. *Second.* In cases of short imprisonment, adjudged by the magistrate, or his assistant, wherein the object would be defeated by the delay attending a reference to the nizamat adawlut, as directed in the above clause, the magistrate is empowered to order the discharge of a prisoner, who may appear to deserve a remission of punishment on the grounds specified; provided that his reasons for every such order be recorded on his proceedings, to be submitted when required for the information of the judge of circuit, who may hold the ensuing jail delivery." § 11. "The jail at Allypore, in the vicinity of Calcutta, being a receptacle for convicts under sentences of perpetual imprisonment and transportation, as well as for other convicts under sentence of banishment, who are sent to that jail from all the zillah and city jurisdictions under this presidency, and it appearing expedient that the occasional inspection of this jail, for which special provisions are contained in the third and fourth clauses of Section 2, Regulation 14, 1811,<sup>1</sup> should be committed to the judges of the nizamat adawlut, the following provisions are enacted for this

**Section 10.**  
Magistrates how to proceed when a convict, under sentence of imprisonment, may appear, from his good conduct, to deserve a remission, or mitigation, of his remaining punishment. In what cases the magistrate may order the discharge of a prisoner, under the circumstances stated, without a previous reference to the nizamat adawlut.

**Section 11.**  
Reasons for placing the jail at Allypore, in the vicinity of Calcutta, under the immediate inspection and control of the judges of the nizamat adawlut.

conviction they may receive the punishment which the law directs." By Section 10, of Regulation 11, 1806, this provision is extended to guards in charge of prisoners who may escape from their custody, whether before or after conviction; but is declared not applicable "to military guards from the provincial battalions, (while such battalions continue subject to military law) or from any regular corps of the army. Whenever it shall appear to the magistrate, that a guard furnished from any of the regular battalions, from any provincial battalion, or from any other corps subject to martial law, has been guilty of wilful neglect in guarding the prisoners under his charge, or of connivance at the escape, or the attempt to escape, of any prisoner, or of any other act of a criminal nature, in the discharge of his duty, the magistrate shall cause the offender to be delivered over to the officer commanding the provincial battalion, or the detachment to which he may belong, with a charge in writing, that he may be tried, and punished, on conviction, by a court martial." It is further directed that the same mode of proceeding "shall be observed, with respect to any other offence involving a breach of military duty, and properly cognizable by courts martial; but shall not be held applicable to any criminal charge against such guards or other sepoys, whether belonging to the provincial battalions or regular corps of the army, which may not involve a breach of military duty, and the cognizance of which may therefore appertain to the civil courts."

<sup>1</sup> The two clauses here referred to are as follow:—"Third. Persons sentenced to imprisonment for life, in the abovementioned jail, shall on no account be permitted to quit the area attached to the jail, for the purpose of being employed on the public roads, or for any other purpose, except in cases in which sickness or accidents may require that they should be taken to the hospital attached to the jail, and they shall be uniformly relodged within the jail whenever their health may admit. Fourth. Persons sentenced to imprisonment for life in the jail at Allypore, shall be employed in the manufacture of articles for which a constant demand may exist at the presidency, or in such other labor as the superintendent of the jail may direct, subject of course to any instructions with which he may be at any time furnished on the question by the Governor General in Council."

Section 12.  
Provision for  
this purpose.

Duty to be  
performed by  
one of the  
judges of the  
nizamut adaw-  
lut.

Section 13.  
The foregoing  
section not  
meant to re-  
strict the au-  
thority of the  
Calcutta court  
of circuit, with  
respect to the  
proper zillah  
jails of the sub-  
urbs of Calcutta.

What prisoners  
are within  
the intention of  
the preceding  
section.

Section 14.  
All prisoners  
under charge  
of the magis-  
trate subject to  
trial before the  
court of cir-  
cuit, for seri-  
ous offences.

R. 9, 1793, § 27;  
and R. 6, 1803,  
§ 24.

Subsistence  
money allowed  
to prisoners.

R. 9, 1793, § 25,  
and R. 6, 1803,  
§ 25.

Persons con-  
fined for six  
months to re-  
ceive on their  
discharge a  
sum, not ex-  
ceeding five  
rupees.

R. 9, 1793, § 26;  
and R. 6, 1803,  
§ 26.

Allowance to  
indigent prose-  
cutors and wit-  
nesses, during  
their attend-  
ance on the  
court of cir-  
cuit.

R. 9, 1793, § 24;  
R. 6, 1803, § 23;  
and other re-  
gulations, au-

purpose.” § 12. “*First*. So much of Section 62, Regulation 9, 1793, as directs that the judges of circuit shall visit the zillah jail of the twenty-four pergunnahs once in every three months, or oftener, if they think proper, and issue to the magistrate such orders as may appear to them advisable for the better treatment and accommodation of the prisoners, shall not be hereafter considered applicable to the jail at Allypore, under charge of the magistrate of the suburbs of Calcutta. *Second*. The duty abovementioned, with respect to the jail at Allypore, shall be performed by one of the judges of the nizamut adawlut; either in rotation, or in such manner as may, from time to time, be determined by the judges of that court.” § 13. “The foregoing section is not meant to restrict the authority, or alter the established duties of the Calcutta court of circuit, with respect to the proper zillah jails of the zillah denominated the suburbs of Calcutta, in pursuance of Regulation 14, 1814; and which are distinct from the Allypore jail. Nor is it intended to affect the powers and functions of the court of circuit, with regard to any of the prisoners under the charge of the magistrate of the suburbs of Calcutta, except such as are confined in the Allypore jail, referred to in the third and fourth clauses of Section 2, Regulation 14, 1811; or are considered to belong to that jail, though employed on the public roads, or other public works, under the direction of the magistrate of the suburbs of Calcutta.” § 14. “It is further hereby explained that nothing in the present regulation is meant to alter the established jurisdiction of the court of circuit, with respect to the trial of serious offences, committed by prisoners in the Allypore jail, or by any other prisoners under charge of the magistrate of the suburbs of Calcutta; the cognizance of which, on commitment by the magistrate, may belong to that court, under the regulations in force.”

Subsistence money, at an established rate, is allowed to all prisoners from the time of their apprehension to the date of their discharge.<sup>1</sup> For the maintenance of prisoners who have been some time in confinement, until they can obtain employment, or procure for themselves some other means of livelihood, the magistrates are authorized to pay to all persons released from jail, after an imprisonment of six months, or upwards, under sentence, and who may appear to be in need of such assistance, a sum, not exceeding five rupees, sufficient to maintain them for one month. The magistrates are further authorized to pay to all prosecutors and witnesses, who may appear to be in need of such assistance, a daily allowance of two annas each, during their attendance on the court of circuit;<sup>2</sup> including also as many days as may be sufficient to come from, and return to, their respective houses. In addition to these payments, the magistrates were empowered by Section 24, of Regulation 9, 1793, and Section 23, of Regulation 6, 1803, to give a reward of ten sicca rupees for every *decoit*, or robber, that might be apprehended and delivered into their custody, to be paid on the conviction of the offender.

<sup>1</sup> Two and a half puns of cowries, or *cucha pice*, per diem, are the usual allowance. But it may be reduced to two pice, or puns, or raised to three pice or puns, (about three quarters of an anna) when the magistrate may judge it proper, on consideration of the cheapness or dearness of provisions. A blanket and some other articles of bedding and clothing are also provided for each convict.

<sup>2</sup> This allowance is also occasionally paid to indigent prosecutors and witnesses attending the inquiry into criminal charges before the magistrate. But on the 16th July, 1811, the magistrates were instructed, by a circular order from the nizamut adawlut, to restrict the payments of the stated allowance to such prosecutors and witnesses, attending the sittings of the courts of circuit, as are really indigent; especially when they may not have been long detained from their usual occupations. The statement of sums paid by the magistrate on this account, at each session of jail delivery, is also usually attested by the judge of circuit.

And a similar reward to police officers, by whom a robber, or in some cases a thief, might be apprehended, was authorized, on conviction of the offender, by Section 18, Regulation 22, 1793; Section 17, Regulation 17, 1795; Section 18, Regulation 35, 1803; and Section 13, Regulation 14, 1807. But objections having been found to the payment of a fixed reward, as liable to abuse, and being also too indiscriminate; the rules abovementioned were rescinded by Sections 13, and 14, of Regulation 16, 1810; and the following rules substituted in Sections 15 to 18, of that regulation:—

§ 15. "Rewards for the apprehension of proclaimed robbers, which may have been sanctioned by the court of nizamat adawlut, or by the Governor General in Council, in pursuance of Section 3, Regulation 9, 1808, will be payable, as therein provided, on the delivery of the person proclaimed to the zillah or city magistrate, by whom the proclamation may have been issued, or to any police darogah within the jurisdiction of such magistrate. It is hereby further declared, that if the person so proclaimed be apprehended in any other jurisdiction, and be delivered up to the magistrate of the jurisdiction in which he may be apprehended, or to any police darogah in such jurisdiction, the reward advertised shall be payable on such delivery, in like manner as if the proclaimed person had been delivered up to the magistrate, by whom the proclamation was issued." § 16. "In cases of gang robbery, murder, or other heinous crime, when the offenders may not be known, and consequently it may not be practicable to proceed against them by proclamation, in pursuance of Section 3, Regulation 9, 1808, if it appear advisable to the magistrate of the jurisdiction, in which the crime may be committed, to offer a reward for the discovery of the offender, or offenders, he shall report the same with a statement of the circumstances of the case, to the court of circuit of the division, and shall specify the reward which he may judge sufficient. The court of circuit, on consideration of such report, if it appear proper to offer a reward, may authorize the same to such amount as shall be deemed sufficient, not exceeding, in any case, the sum of one hundred sicca rupees for a *sirdar*, or leader of a gang, and twenty rupees for each of the inferior offenders that may be discovered, and apprehended in consequence. In any case which may appear to the court of circuit to require a larger reward, the magistrate's report shall be forwarded by the court of circuit to the court of nizamat adawlut, with their opinion of the reward that should be offered; and the court of nizamat adawlut may authorize such reward as shall appear sufficient, not exceeding the sum of five hundred sicca rupees, for a *sirdar*, or leader, and one hundred rupees for each of the inferior offenders. If these rewards appear to be, in any case, insufficient, the court of nizamat adawlut shall report the same for the consideration and orders of Government." § 18. "All specific rewards which may have been duly sanctioned by the courts of circuit, the court of nizamat adawlut, or the Governor General in Council, under the preceding section, shall be payable on the conviction of the offender or offenders, before the court of circuit. The courts of circuit are also hereby empowered to direct the payment of any part of the specific rewards authorized, although the persons apprehended may not be convicted of the crimes charged against them, if from proof of their notorious bad character, and the whole of the evidence, there appear to be ground of presumption, that the information given against the prisoners, was well-founded, although there may not be sufficient proof for conviction. Provided further, that it shall be competent to the court of circuit to withhold, and prohibit the payment of the whole, or any part, of the specific rewards, offered under the preceding section, although the persons informed against and apprehended may be convicted, if it should appear on the trial that any improper means have been taken by the informer with a view to the

authorizing a fixed reward to be paid for every robber apprehended and delivered up to the magistrate. Rescinded by R. 16, 1810; and new rules for rewards enacted in that regulation. Section 15. Rule for payment of rewards, for apprehension of proclaimed robbers, in pursuance of Section 3, R. 9, 1808.

Section 16. Magistrate's how to proceed when it may appear advisable to offer a reward for the discovery of unknown offenders in cases of magnitude.

Discretion vested in the courts of circuit in such cases.

And in the court of nizamat adawlut. In what cases a report to be made for the orders of Government.

Section 18. Rewards sanctioned under the preceding section, when payable.

In what cases the courts of circuit may order payment, in whole, or in part, without conviction of the persons apprehended. In what cases the courts of circuit may also withhold payment of the rewards offered, under preceding section, notwithstanding the conviction.

tion of the persons apprehended. Section 18. Authority vested in the courts of circuit to direct a remuneration for meritorious service by police officers and others, in the discovery, or apprehension of public offenders, when no specific reward may be payable to them.

Title of R. 9, 1808, adverted to in section of R. 16, 1810, above cited. Reason stated in the preamble to R. 9, 1808, for the following enactments.

Section 2. Magistrate to report to the nizamat adawlut, when he may think the ordinary process for apprehending offenders would be ineffectual; stating the amount of the reward he would recommend to be offered for their apprehension

conviction of the accused, or that the latter has suffered any maltreatment from the former, or from any person under his influence." § 18. "In cases wherein any meritorious service may have been rendered by police officers, or others, in the apprehension or discovery of public offenders, for whom no specific reward may be payable to the person or persons who have performed such meritorious service, the courts of circuit, on due consideration of the service rendered, the exertions made, and any expense incurred, in the performance of it, are authorized to direct the payment of such remuneration as may be considered adequate, not exceeding the sum of one hundred rupees for a *sirdar*, and ten rupees for an accomplice. If a larger reward be deemed proper, a report of the case shall be made to the court of nizamat adawlut, who are authorized to direct the payment of any sum not exceeding five hundred sicca rupees: If, in any case, it appear proper to grant a higher reward or compensation than five hundred rupees, the court of nizamat adawlut shall report the same for the consideration and orders of Government."

Regulation 9, 1808, which is adverted to in Sections 15 and 16 of Regulation 16, 1810, above cited, is entitled, "A regulation for the apprehension of persons concerned in the offence of gang robbery, and especially the *sirdars* or leaders of gangs of *decoits*." The preamble and enactments, of this regulation, are, as follow:—"Regulations have from time to time been enacted for the apprehension and punishment of persons concerned in the commission of *decoity* or gang robbery; a crime, which has prevailed for a very long period in several of the districts within the province of Bengal. The continued prevalence, however, of that atrocious offence in some of the districts, and the importance of suppressing a crime so injurious to the peace and happiness of the community, render it necessary that further provisions should be adopted, to facilitate the apprehension of the *sirdar decoits*, to whose influence and ascendancy over their respective gangs and accomplices the existence of this serious crime is chiefly to be ascribed, and also to facilitate the apprehension of other persons concerned in the commission of such offences. With this view it is essential to call forth the active exertions of all persons possessing by their situation the means of aiding in the apprehension of offenders of that description. To promote the attainment of so important an object, it has been deemed advisable, on the one hand, to establish personal security and indemnity, together with suitable rewards, for such persons as may afford active assistance in bringing offenders of the above description to punishment; and on the other, to prescribe adequate pains and penalties for such persons as, possessing the means of affording assistance towards the prevention of a crime so injurious to the peace and happiness of society, shall neglect to employ them to that end: the following regulation has in consequence been passed by the Governor General in Council, to be in force from the period of its promulgation, throughout the territories immediately dependent on the presidency of Fort William." § 2. "Whenever the magistrate of a *zillah* or city shall have certain information, that any person residing in or resorting to any place or places within the limits of his jurisdiction, has been actually concerned in the commission of the offence of *decoity* or gang robbery, or that the notoriety of any such person having been guilty of, or concerned in, the commission of such offences, is sufficiently established to render his apprehension essential to the peace and tranquillity of the district, and the magistrate shall be of opinion that the ordinary process prescribed for the apprehension of public offenders would be ineffectual, he shall report the circumstances of the case to the nizamat adawlut, with his opinion and the grounds thereof; stating at the same time the amount of the reward which he would recommend to be offered for the apprehension of the

person in question." § 3. "On the receipt of the magistrate's report, the nizamut adawlut will determine whether the degree of notoriety and the dangerous character of the person accused, or the aggravated nature of the offence alleged against him, be such as to warrant the measures herein prescribed for his apprehension, and for his punishment in case of contumacy. In such case, the nizamut adawlut is hereby empowered to authorize the offer of such reward as they may deem adequate for the apprehension of the person accused, not exceeding however, in any one instance, the sum of rupees five hundred, without the special authority of the Governor General in Council. The nizamut adawlut shall at the same time direct the magistrate to issue a proclamation, to be affixed at his own cutcherry, and at the several police thannahs within his jurisdiction; and to be published by beat of drum at the towns in which they are situated."

Section 3.  
Nizamut adawlut empowered to authorize the offer of reward in such cases, as they may deem proper, but not exceeding five hundred rupees, without the previous sanction of Government. Nizamut adawlut to direct the magistrate to issue a proclamation in such cases. Form of proclamation.

"Whereas                      supposed to be an inhabitant of                      , about                      years of age, (here describe his person if it be known) by profession a                      (or as many of these particulars as can be ascertained) stands accused before the magistrate of                      , of (here specify the offence.) It is therefore hereby proclaimed, by the special orders of the court of nizamut adawlut, that the said                      , is required and commanded to appear before the magistrate at the cutcherry of this zillah (or city,) to answer to the matter alleged against him, within the period of two months from the date hereof; in default of which, the said                      , will be deemed guilty of the crime of which he stands accused, and will in consequence be liable to be imprisoned and transported for life. It is also hereby proclaimed, that all persons whosever are authorized and required to apprehend the said                      , wherever he may be found: and any person or persons who shall, under the authority hereby given, apprehend the said                      , and shall deliver him in safe custody, to the magistrate of this zillah (or city) or to any police *darogah* within the jurisdiction of this court, shall be entitled to receive the reward of rupees                      from Government. It is also hereby notified, that any person aiding or harbouring the said                      , will be personally subject, on conviction, to fine, imprisonment, and confiscation of property, under the provisions of Regulation 9, 1808."

Seal of the Court: "Foujdarry Adawlut, the                      18                      , corresponding with the (æra current in the zillah or city)."

(Signature of the magistrate.)

"On the 24th February, 1810, the court of nizamut adawlut, at the suggestion of Mr. T. Brooke, senior judge of the Bareilly court of circuit, instructed the magistrates to adopt the following measures, in addition to those prescribed in the regulation cited, for the more general promulgation of the proclamation therein directed, viz. "that a copy of the proclamation be affixed at the collector's cutcherry, and that the collector be directed to transmit copies to his tehseeldars, to be affixed by them at their cutcherries. It is also to be an invariable rule, to have the publication made by beat of drum in the town, village, or place, where the person or persons proclaimed, or their families, have their residence. If a market be held at the place, or where the thamadar is stationed, the publication to be made on a market day, at the time of day when the people assemble in the greatest number; or, if no market be held, the publication to be made by beat of drum at three different times, at the distance of a week between each publication." (See further rules for police officers in Section 26, Reg. 20, 1817.) The magistrates were also instructed, on the 18th April, 1815, whenever they may propose the offer of a reward for the apprehension of persons suspected of having been concerned in robbery, or other heinous offence, especially when they may consider it necessary that such reward be accompanied with a proclamation, as provided for in

Section 4.  
The magistrate to transmit copies of such proclamation to the adjacent magistrates for publication.  
Section 5.  
Magistrate how to proceed against persons appearing or apprehended within the period limited.  
Section 6.  
On after the expiration of such period.  
Section 7.  
How the magistrate is to proceed.

Section 8.  
How the court of circuit is to proceed.

Section 9.  
Nizamut adawlut may mitigate the sentence in such cases.  
Section 10.  
Conviction under this regulation not to exempt a prisoner from other

§ 4. "The magistrate shall transmit copies of the proclamation issued by him, under the foregoing section, to the magistrates of any of the adjacent zillahs or cities, in which he may consider it probable that the proclaimed person may have concealed himself, that the same may be published throughout their respective jurisdictions." § 5. "Should the person proclaimed, under this regulation, appear before the magistrate, or be apprehended within the period limited in the proclamation, the magistrate shall proceed against him as prescribed by the regulations already in force." § 6. "If the proclaimed person shall appear, or be apprehended, at any period after the expiration of the time limited, he shall be proceeded against in the following manner." § 7. "The magistrate shall take such evidence, and hold such proceedings as he may judge necessary, for the purpose of identifying the person of the prisoner; and having established his identity, shall afford to the prisoner an opportunity of offering any plea which he may deem proper, why the sentence specified in the proclamation, directed in Section 3, should not be pronounced against him, without trial; recording the names of any witnesses mentioned by the prisoner in support of his allegations. The magistrate shall then commit the prisoner to jail, and shall cause the witnesses named by him for the above purpose, as well as the persons necessary to prove the identity of the prisoner, the due publication of the proclamation prescribed by Section 3, with the return made to it, and the time and manner of the prisoner's apprehension, to be in attendance along with the prisoner, at the next ensuing sessions of the court of circuit; and shall at the same time lay before the court the whole of his proceedings in the case." § 8. "On the prisoner's being brought before the court of circuit at such ensuing session, the judge of the court, before whom it may be holden, shall again afford to the prisoner an opportunity of urging his reasons why the sentence prescribed by this regulation should not be pronounced against him without trial. The judge shall also examine the witnesses who may be in attendance, under the directions contained in the preceding clause, and whose evidence may be deemed necessary to establish the identity of the prisoner; the due publication of the proclamation, with the return made to it; and the time and manner of the prisoner's apprehension. Should the judge be satisfied, from the proceedings held by him, that the prisoner has not incurred the penalties prescribed by this regulation, he shall suspend passing any sentence on the prisoner. On the contrary, if the judge should be satisfied of the identity of the prisoner, and of his contumacy in not appearing before the magistrate within the prescribed period, he shall adjudge the prisoner to be imprisoned and transported for life, forwarding the whole of the proceedings, in either case, to the nizamut adawlut, who will pass such sentence or orders thereupon, (in conformity with this regulation) as the circumstances of the case shall appear to warrant." § 9. "Nothing herein contained shall preclude the nizamut adawlut from mitigating the sentence passed on a prisoner, under this regulation, whenever that court shall see sufficient ground for so doing." § 10. "A conviction under the above provisions shall not exempt a prisoner so convicted from being brought to trial on any specific charge of any other crime or offence, the nature of which may be such as to render him liable to an equal or greater punishment under the regulations. Whenever a charge

Section 3, Regulation 9, 1808; "to be careful, in addition to a full report of the circumstances of the case, as prescribed by Section 2 of that regulation, to submit copies of their proceedings; or such parts of them as may be sufficient to show the grounds and evidence on which the person, or persons, proposed to be proclaimed, or for whose apprehension a reward is proposed, are considered to have been concerned in the commission of the offence."

of this nature shall be preferred against a prisoner so convicted, whether before or subsequently to his being apprehended, or shall arise from any proceeding held against him, and there shall appear to the magistrate sufficient grounds for so doing, he shall bring the prisoner to trial on such charge, before the court of circuit under the established rules, as soon as may be practicable after the prisoner's surrender, or apprehension. The court of circuit or nizamat adawlut may also respectively direct, that the prisoner be brought to trial on any specific charge not being that for which he has been proclaimed, should either of those courts see grounds for doing so, from the proceedings before them." § 11. "It being the duty of all classes of the community to aid in the apprehension of persons charged with the commission of public crimes and offences; all zemindars, talookdars, and other proprietors of lands, whether malgoozarry or lakheraje, all sudder farmers and renters of land of every description, all dependant talookdars, all naibs and other local agents, all native officers employed in the collection of the revenues and rents of lands on the part of Government, or of the court of wards, and generally, all persons of whatever description, are hereby required to afford every practicable assistance in the apprehension of such offenders, particularly of the notorious criminals described in this regulation, both during the period specified in the proclamation, and subsequently to that period, should they still have evaded the pursuits of justice. It is hereby at the same time declared, that if any person in his endeavours to apprehend a proclaimed offender for whose apprehension a reward has been offered, should wound or slay him in consequence of his standing on his defence or flying, the person so wounding or slaying the criminal, shall be deemed entirely guiltless with respect to that act; in like manner as any person pursuing a robber or murderer immediately after the commission of the crime, or resisting him during his attempts to perpetrate the offence, is held guiltless if he wound or slay the criminal in endeavouring to apprehend him." § 12. "All zemindars, talookdars, and other proprietors of lands, whether malgoozarry or lakheraj, all sudder farmers and under-renters of land of every description, all dependant talookdars, all naibs and other local agents, all native officers employed in the collection of the revenues and rents of lands on the part of Government, or of the court of wards, are hereby declared (in addition to the responsibility attaching to them by the existing regulations with respect to robberies in general) especially accountable for the early and punctual communication to the magistrates and police darogahs, either publicly or secretly, as the informant may judge proper, of all intelligence which they may obtain respecting the resort of any proclaimed decoit to any place within the limits of the state or farm, held or managed by them; and the magistrates are hereby strictly enjoined not to divulge any secret information communicated to them on this subject, which may eventually affect the personal security of the informant." § 13. "If a magistrate shall have grounds to believe that any person, of the description of those specified in the preceding section, shall have neglected to give due information to the magistrate or the police darogah, of the resort of any proclaimed decoit to any place within the limits of the estate or farm held or managed by such person, the magistrate shall call upon him to answer to the charge; and if it shall appear upon a full and impartial enquiry, that the person accused has been actually guilty of the neglect ascribed to him; the magistrate shall sentence the offender to pay such a fine to Government, and to suffer imprisonment for such a period of time, as he may deem proportioned to the offence, not exceeding however, the limitation prescribed by Section 19, Regulation 9, 180, viz. imprisonment for six months, and a fine of two hundred rupees, commutable, if not paid, to imprisonment for a further period not exceeding six months

Section 11  
All persons  
required to af-  
ford assist-  
ance in the ap-  
prehension of  
such offenders  
and persons  
wounding or  
slaying such  
proclaimed of-  
fenders to be  
deemed guilt-  
less.

Section 12.  
All landhold-  
ers and their  
officers, or the  
native revenue  
officers of  
Government,  
accountable  
for early and  
punctual com-  
munication of  
intelligence  
respecting  
such proclaim-  
ed offenders,  
and magistrate  
not to divulge  
secret intelli-  
gence

Section 13  
Persons of the  
description in-  
cluded herein  
how to be  
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neglect of giv-  
ing due intelli-  
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Extended to  
notorious re-  
cruits, or ven-  
ders, of stolen  
property by  
s. 10, R. 1  
1811



Section 14.  
How such persons are to be dealt with, in cases of harbouring or assisting proclaimed decoits.

longer." § 14. "If a magistrate shall have grounds to suspect that any person, of the description of those mentioned in the preceding sections, has afforded any actual assistance in harbouring a proclaimed decoit, subsequently to the promulgation of the proclamation; that is, if such person shall be suspected of having afforded to the said decoit lodging, money, grain, or other supplies, or that he has committed any other overt act, tending to aid the offender in his depredations upon the community, or to evade the pursuits of justice; or that he has received any present or nuzzer, either in money or goods, from the said offender; the magistrate shall call upon the person suspected of having so offended for his reply; and if it shall appear upon a full and impartial enquiry, that he has been actually guilty of the serious offence ascribed to him, the magistrate, in addition to the punishment mentioned in the preceding section, shall adjudge the estate or farm held by him (supposing him to be a sudder zemindar, talookdar, or farmer) forfeited to Government. Provided, however, that previously to carrying the judgment of forfeiture into execution, the magistrate shall submit his proceedings on the subject to the court of the nizamut adawlut, who will confirm or annul the judgment so passed, according as they may be of opinion, that the charge has been duly established or otherwise; provided, moreover, that in the event of their confirming the judgment, the nizamut adawlut shall report the case to the Governor General in Council; at the same time stating their opinion, whether the forfeiture should be enforced or remitted, or commuted to a fine." § 15.

Section 15.  
How persons not being proprietors, or sudder farmers of land, are to be dealt with in such cases.

"Should the person convicted of the offence, mentioned in the preceding section, not be a proprietor or sudder farmer of land, the magistrate shall sentence him, in addition to the punishment noticed in Section 13 of this regulation, to such further fine and imprisonment as he may deem proportioned to his offence; but previously to carrying such further judgment into effect, the magistrate shall submit his proceedings to the nizamut adawlut, who will finally confirm, amend, or rescind the decision, as may appear to them to be just and proper. Should the person so offending be also an officer of Government, the nizamut adawlut will at the same time take into their consideration whether he should not be dismissed from his office; and if so, will adopt the necessary measures for that purpose, under the provisions of the general regulations." § 16. "A separate register shall be kept by the magistrates of all sirdar decoits or other persons proclaimed under the present regulation, according to the following form:

Section 16.  
Register of offenders to be kept by the magistrate.

Date of proclamation.	Name of the person proclaimed.	Date of apprehension, surrender, or ascertained death.	Sentence by the Court of Circuit.	Final sentence of the Nizamut Adawlut.	Date of final sentence.

Copies of such registers to be transmitted monthly to the Nizamut Adawlut, and transcript to be hung up in the cutcherry of

§ 17. "A copy of the foregoing register shall be transmitted, duly revised, on the 1st of each month to the court of nizamut adawlut. A transcript of it shall likewise be at all times suspended in the cutcherry of the magistrate, in order that the public may be full apprised of the names of proclaimed decoits; whether the period limited in the proclamation for their surrender be past or yet unexpired."

Numerous robberies and other serious crimes having been committed by different classes of persons, ordinarily known by the appellation of *dakoits* in the lower provinces, or of *cozauks*, *thugs*, and *budheks*, in the upper provinces, and there being grounds to apprehend that some of the zemindars, and other landholders, instead of aiding in the suppression of offences so injurious to society, had countenanced the offenders, with the view of securing exemption from their depredations, or participating in their plunder, rules almost exactly corresponding with Sections 12, 13, 14, and 15, of Regulation 9, 1808, were enacted in Sections 2, 3, 4, and 5, of Regulation 6, 1810, for defining the penalties to which zemindars and others shall be subject for harbouring robbers of any description; or neglecting to give early information to the magistrates and police darogahs, "of all intelligence which they may obtain respecting the resort to any place within the limits of the estate, or farm, held or managed by them, of any person or persons of the different classes of people ordinarily known by the appellation of *dakoits*, *cozauks*, *thugs*, or *budheks*; or of any other description of robbers." <sup>1</sup>

Reasons stated in preamble to R. G. 1810, for extending the rules contained in Sections 12, 13, 14, 15, of R. G. 1808, to include dar-and-oth- in giving information re- specting da- kouts, cozauks, thugs, bud heks, and other de- (con- tions of rob bers. Enactment for this pur- pose in Sec- tions 2, 3, 4, of R. G. 1810

<sup>1</sup> The only material variation is in this section, which directs that, if the person offending be an officer of Government, the nizamat adawlut shall "order him to be dismissed from his office; and shall further report to the Governor General in Council, whether it appear expedient that the offender should be declared incapable of again serving Government in any public capacity."

<sup>2</sup> *Dakoits* (or *dukyts*) have been sufficiently mentioned in a former part of this Analysis. *Cozauks* are armed horsemen; and special rules for the suppression of robberies by them, in the ceded and conquered provinces, were enacted in Regulation 2, 1810; which provided for the seizure of all armed horsemen, of the denomination referred to, who might not be licensed by the zillah magistrates. This regulation was however rescinded, by Section 3 of Regulation 15, 1812; as being no longer necessary. The *budheks* and *thugs* are described in the following observations, extracted from an official report by Mr. John Shakespear, Acting Superintendent of Police for the western provinces, dated the 30th April, 1816; and circulated for the information of the magistrates, by order of the Governor General in Council, on the 30th August, 1816.

"The most heinous robberies committed in these provinces are perpetrated by gangs of *Budheks* and *Shoghal Khors*. These gangs are almost exclusively settled in the district of Ally Ghur, and in that part of the territory of the Newab Vizier, bordering the district of Goruckpoor. After much inquiry I am disposed to believe that the *Budheks* of Ally Ghur, and the *Shoghal Khors* of Burratich, are connected with each other; and are one and the same people; the name constituting the sole distinction. Exclusive of the *Shoghal Khors* established in the country of the Newab Vizier, the following tribes of jackal eaters are notorious in the western provinces:—1st, *Budheks*,—2d, *Koonjur*,—3d, *Geedeca*,—4th, *Boureea*,—5th, *Harboora*. All of these subsist by robbing, and are more or less attached to a vagrant life, eating the flesh of jackals, lizards, &c. When stationary, they commonly reside with their families in temporary huts, constructed of reeds and leaves, and erected in jungles and plains. The term *Budhek* is said to be derived from the Shanskrit word "*Budh*," "destruction." The following distich is taken from a Hindee author:—

"Hit unhit sub hot hyn, Toolsee door dinpae,  
"Budheo, Budhek mrigban te roodhrke det butae."

Which may be rendered—

(1) Toolsee, friends become enemies in the days of misfortune; even as the blood of the stricken deer serves as a guide to the Huntsman (destroyer).

"The *Budheks* of Ally Ghur and the *Shoghal Khors* of Goruckpoor are outcasts of Mosulman as well as Hindoo tribes; the majority however are Rajpoots. The records of this office show a subdivision of classes amongst the *Budheks*, as the *Soodunkree*, *Doodhadhul*, *Jarun*, *Danpee*, *Bhiptee*, *Budharah*, *Powar*, and *Chowhan*, the two last of which are also the distinguishing names of Rajpoot tribes.

"The *Budheks* are divided into separate gangs, each consisting of from thirty to an hundred followers, headed by a jummadar; and these gangs occasionally unite for the purpose of carrying on their depredations with greater certainty of success and dis-

PROVISIONS of  
R. 9, 1808, §13,  
extended by  
R. 1, 1811, §10,

The provisions of Section 13, Regulation 9, 1808, above stated, were extended, by Section 10, of Regulation 1, 1811, to all zemindars and other

patch. They are commonly protected by zemindars, who support their families during their absence, and assist them when they are apprehended and get into trouble; becoming security to the police for their future good behaviour, and employing them ostensibly as ryots; but, in fact, harbouring and encouraging them in their predatory habits, for the sake of the proportion of plunder which they invariably receive. They are also frequently supported by petty Mahajuns, who advance them money at an exorbitant interest.

"Some of the Budheks share such booty as they obtain; others receive a monthly stipend of two or three rupees from their jummadars, who also feed and maintain them at a considerable expense, supplying them with spirituous liquors, of which they drink inordinately. The jummadars have generally considerable sums of money at their command, either for immediate expenditure, or for obtaining their release by bribery, when apprehended.

"Formerly numbers of Budheks infested different parts of the districts of Allyghur, Etawah, Furruckabad, and Agra. At present those residing in the Company's western provinces are settled on the estates of the chieftains of Moorsan, Hatras, &c. in Allyghur, and some few in the district of Agra. The rest are established in great numbers in pergunnahs Atroula, Bulrampoor, and Burraitch, in the north east quarter of the territory of the Newab Vizier, and also in the vicinity of Gohud, Gwalior, Bhurtpoor, and the country to the westward of Dehli. The gangs generally make excursions once a year, in the prosecution of which they journey several hundred miles. Those in Allyghur have been known to range to Suharunpoor, Hurdwar, Lucnow, Allahabad, Benares, and Jyepoor; and those in Burraitch to Chuprah in the district of Sarun, to Huzaree Bagh in Ramghur, and to Allahabad. On some occasions they travel separately, and meet at a given spot, or they follow one another in detached parties, in which case they fasten shreds of cloth to trees, or pile up mounds of earth or dung, as marks to guide those of their brethren who follow their footsteps. They travel, not unfrequently, disguised as fakeers or pilgrims, with the water of the Ganges, carrying in their kauwurs, or caskets, heads of spears to arm themselves; and food for their subsistence. At other times their jummadars journey through the country as merchants; accompanied by their gangs, and women as servants; with camels, carts, tents, and doolies. Previously to their commencing these expeditions, they send out their spies, disguised as religious mendicants, commonly as byragees, to obtain intelligence in any town or city where they may determine to proceed. It is the business of these spies to gain correct information regarding the hoards of cash or jewels in the houses of merchants and others, or respecting dispatches of treasure. In the principal cities are to be found persons styling themselves jummadars, who supply the bankers and merchants with hired peons, for the safe-guard of treasure or merchandise. Some individuals of this description have been observed to rise to great opulence in a short time. In several confessions of Budheks, apprehended in Furruckabad, Sarun, and other places, it is stated that the Budhek spies collude with these jummadars; and instances are mentioned of the Budheks having themselves been hired out by these jummadars, to serve as peons for the protection of the treasure which they intended to plunder. The surrafs and mahajuns, whether from false economy, or from carelessness, usually send their money under very insufficient escorts; and it is a common practice to attempt to remit and conceal a dispatch by sewing up the money in the clothes of the peons. When the spies have obtained information, they prepare bamboos, as shafts for spears, which they bury under ground, with torches for the use of the gang. They endeavour also to arrange for the reception of the gang, on their arrival, with some zemindar or local resident, with whom they may have been formerly acquainted; or they select some retired jungle or ravine where they may remain concealed till the time of action. On the arrival of the gang the jummadar arranges his plan with the spies. They then quit their place of concealment, dig up the bamboos and torches, and fixing on their spear heads, proceed, as early in the dusk of the evening as possible, that they may have the night before them for retreat. If a house is to be robbed, they station men to guard all the approaches, whilst they effect the robbery; and they invariably murder or wound all who come in their way. They are equally sanguinary with the guards escorting treasure; and frequent instances have occurred

landholders, or farmers of land, their local agents, and native officers of Government employed in the revenue department, who may neglect to give

to neglect in giving information respecting notions

of Sepoys having been surprized and butchered at night. In the doolies they carry off their wounded, as women, with the purdahs down; and as in some of these robberies hujjams, or village barber-surgeons, have been apprehended with the gangs, it is probable that these persons accompany to dress their wounds. Immediately the robbery is effected, they travel the whole of the night, in the direction of their homes, with great rapidity; and divide their booty on the following day, at the first favorable spot, when they separate, and return to their places of abode by different routes.

"The class of Shoghal Khors, called *Koonjurs*, are said to have formerly been very notorious as decoits. There are, however, very few of this class remaining in the western provinces; and those, for the most part, earn a livelihood by the manufacture of cord, baskets, and by cutting wood, &c. &c. The *Boureea* and *Harboora* classes of Shoghal Khors are particularly squalid, and scarcely human in their appearance. The greater part of them have, from time to time, been expelled from the Company's territories, but there are still many remaining; and numbers frequently make temporary incursions from the Mahratta States. These are the men who follow camps, and are particularly expert in cutting into, and stealing from, tents. They are not so notorious as gang robbers, as famed for their skill as thieves and cut-purses; robbing in crowds of people, and passing the stolen property from one to another, and practising other similar tricks to prevent detection.

"The *Geedeeas* are similar in their habits to the two classes last mentioned; and are likewise famed for imitating the noise of animals, when they approach to rob, and for disguising themselves in skins to avoid detection.

"Of these classes, the *Budheks* are by far the most numerous and destructive to the peace of the country; and the circumstances under which they rob, combined with the precautions which they take, by giving two or three names to each individual, and using a cant, peculiar to themselves, render it extremely difficult to bring them to justice.

"Much scepticism still prevails regarding the existence of any distinct class of people who are designated *Thugs*. Persons have been apprehended, tried, and convicted, for highway robbery and murder, under circumstances similar to those which distinguish the crimes of this description ascribed to the Thugs; but no instance has come to my knowledge of any individual having been convicted of highway robbery and murder, against whom it has been established that he was a professed Thug, who earned a subsistence by the commission of this crime. The result of such inquiries as I have made upon this subject, leaves however little room for doubt that there are at present persons residing in the Company's territories, who practise this species of robbery as a profession. Various confessions in this office show, that regular societies of these men have had existence, communicating together and making, at stated periods, a division of their spoil. In addition to the information which has already been submitted, respecting the mode in which these robberies and murders are committed, it may be satisfactory to Government to be put in possession of the following particulars, collected from the records of this office:

"The term "*Thug*" is usually applied, in the western provinces, to persons who rob and murder travellers on the highways, either by poison or the application of the cord or knife. The literal meaning however, in its common acceptation, as given in the familiar proverb, is "*villain*," "*rascal*," "*knave*," &c. which also is the signification applied to the term in Gilchrist's Dictionary. "*Bhaugulpoor ka Bhugalea, Kuhlgaon ka Thug, Patna ka Dewaleea, teenon nam zud*;" or "*The Bhaugulpoor cheats. the Kuhlgaon knaves, and the Patna swindlers, are notorious.*" They are known also by different appellations in other parts of India, as would appear from the following extract from a work recently published:

"*Sarungpoor* is famous for a manufactory of muslins for turbans and other cottons, which are cheaper than any we have met with. A *Jatra*, or religious fair, is occasionally kept here, at which our fellow traveller, Siad Mahomed, a particular friend of Sir Charles Maller's, was present, on his last journey to Dshli; when several men

receivers, or  
venders, of  
stolen prop-  
erty

information to the magistrate or police darogah, " of any notorious receiver, or vender, of stolen property, within the limits of the estate or farm held or

were taken up for a most cruel method of robbery and murder practised on travellers by a tribe called *Phanseegurs*, or stranglers, who join passengers frequenting the fair, in bye roads, or at other seasons, convenient for their purpose. Under the pretence of travelling the same way, they enter into conversation with the strangers, share their sweetmeats, and pay them other little attentions, until an opportunity offers of suddenly throwing a rope round their necks, with a slip knot, by which they dexterously contrive to strangle them on the spot.'

" In the part of India to which the present report relates, there would appear to be five distinct classes of robbers of this description, who rob and murder on the highways.

" *1st Class.* The high roads leading through Etawah, Allyghur, and Furruckabad, are, for the most part, the scenes of the atrocities committed by this class. To so great an extent did this crime prevail in former years, that during 1808, and 1809, not less than sixty-seven bodies were taken out of wells in the single district of Etawah. The gangs composing this class were established and fostered in the estates of the chieftains Hecra Sing, Bhugwunt Sing, and Thakoor Diaram, in Allyghur, and of Himmuto Sing, the former Rajah of Eta, in the district of Etawah; and some detached parties also resided in different parts of the three districts above named. In 1811, a list of sixty-eight persons and several sirdars, called jummadars, composing these gangs, was given into this office by persons who were induced to deliver themselves up to Colonel Gardner, under the hope of pardon. They were all Mosulmans, and chiefly of the Mewatee tribe. By the confessions made by the members of these gangs, they appear to have carried on their malpractices in small parties, assuming various disguises, resorting to the Serais, and accompanying travellers under specious pretences, to have watched their opportunity, and to have destroyed their victims in retired places, commonly by strangulation; the knife being used also to secure complete destruction, and the bodies being usually thrown into wells or nullahs. Deleterious drugs are said to be used only by novices in the business, the more experienced Thugs trusting rather to the certain effects of the knife or cord, than to the doubtful operation of poison. These murders are most frequent in the hot winds, at which season travellers are induced to start on their journey before day light, to avoid the heat.

" *2d Class.* This class consists exclusively of Hindoos, and chiefly of the Lodeli tribe. They are stated to pass themselves on travellers as Brahmins and Kaitis, and are reported to be much more numerous than the 1st class. The scene of their depredations has been, for the most part, on the confines of Etawah, and the western thannahs of the Cawnpoor district, and they are stated to be ostensibly engaged in cultivating small spots of land, though in fact supported by the more lucrative profession of Thuggy. The murders committed by these people are effected by means similar to those practised by the 1st class.

" *3d Class.* This class was formerly settled in the pergunnahs of Sindouse and Purhara, from whence they were expelled, and have since taken up their residence in Mahratta villages on the confines of our territory, where the aumils of the native Governments are said to derive a revenue from their depredations. From the examinations given in the Appendix, it would appear that these Thugs are Mosulmans and Hindoos of various tribes. The murders committed by these gangs appear to be perpetrated more openly than those committed by the first two classes; whole parties of travellers being destroyed together, and the bodies of these victims being frequently found unburied on the plains. The depredations of this class are said to have formerly extended over different parts of the Doab, but latterly, to have been directed to the country near Gwalior, and to the district of Bundelkhund. It does not appear that the crime of murder by Thugs was known in the district of Bundelkhund prior to 1812; but, in consequence of the dispersion of the Sindouse Thugs, no less than nineteen instances of the offence were ascertained in 1813, in which thirty-five bodies were found with marks of the knife or cord. Very considerable gangs of these people are said to be at present collected in the Mahratta states. Mr. Wauchope, on the 21st instant, writes—" But a few weeks have elapsed since a party of forty-two travellers (men, women, and children) were every one strangled by a large body of Thugs. The travellers were coming from Jubbelpoor towards Purnah, and the murders took place

managed by them." And by two corresponding rules enacted in Section 4, Regulation 3, 1812, and Section 2, Regulation 8, 1814, the same provisions have been extended to landholders and farmers, their local agents, and all native officers employed in the collection of the revenues and rents of land on the part of Government, or of the court of wards, who may neglect to communicate to the local police officer, or magistrate, any information obtained by them "respecting the commission of robberies, or the offence of breaking into houses, tents, or boats, or other places of habitation, perpetrated within the limits of the estate or farm held or managed by them;" or "respecting the commission of murders, or the offences of arson, and theft, perpetrated within the limits of the estate or farm held or managed by them."

As being immediately connected with the rules above-cited for the discovery and apprehension of proclaimed offenders; and persons charged with, or suspected of the commission of heinous offences; the following sections of Regulation 3, 1812, may be stated in this place:—§ 9. "*First*. On the receipt of this regulation, the magistrates of the several zillahs and cities shall cause to be prepared, according to the forms hereunto annexed,

Further extended by R. 3, 1812, and 8, 1814, as follows:

By R. 3, 1812, § 4, to neglect in giving information respecting robberies, or burglaries.

By R. 3, 1814, § 2, to neglect in giving information of murders, or offences of arson and theft. Provisions of R. 3, 1812, connected with the rules above-cited. Section 9. Registers of offenders to be

about the frontier between the Nagpore and Purnah country. Four of the miscreants were seized by an officer of the Purnah chief, &c. &c."

"It would appear from examinations in this office, that the punishment for this offence, in some of the Mahratta states, is by enclosing the criminal alive in a pillar constructed of masonry. The joint magistrate of Etawah writes that a gang of Thugs, seized not long since by the chieftain Meer Khan, were subjected to amputation of each hand, and to the loss of their noses.

"*4th Class*. Several instances of murder on the highways in the districts of Allahabad, Ghazeepeer, and Juanpoor, will be observed in the detailed reports for the last year, said to have been perpetrated by persons assuming the garb of byragees, who join travellers at Muths, and, accompanying them on the road, take an opportunity of mixing the seeds of the Dhuttoora, or other narcotic plant, with the hooka or food of the traveller, and plunder him when stupified or killed by the effects of the dose. These murders are not, I apprehend, committed by the persons termed Thugs; as poisoning would appear to be the only means of destruction used by the robbers. At the same time, as they have prevailed for some years, particularly in the district of Juanpoor, and the circumstances attending each case are nearly alike, there seems reason to believe, that some association, similar to that of the Thugs of the Doab, is established in Juanpoor and its vicinity. Pilgrims proceeding from the west and north west to Gya, or to Jugurnath in Cuttack, take Benares in their way, and pass through the district of Juanpoor. In like manner, pilgrims proceeding from the lower provinces pass through Juanpoor, in their way to Hurdwar, or to Muttra and Bindrabund. The circumstances of various roads meeting in this district, combined with the facilities afforded for escape by the proximity of the country of the Nawab Vizier, are probably the causes why this offence is more prevalent in Juanpoor than elsewhere.

"*5th Class*. Travellers have been frequently found murdered in that part of the country placed under the joint magistrate stationed at Ghazeepeer. The bodies have commonly been discovered buried; and the same offence can be traced to the eastward through the districts of Sarun and Tirhoot. In the detailed report on the state of the police, during the last year, in the jurisdiction of the joint magistrate of Ghazeepeer, a case will be found stated, in which it appeared, from the magistrate's enquiries, that a fraternity of Goshains had long been established in that quarter, who were said to entice travellers to sojourn at their Muth, particularly Sepoys, and to murder them. It is not stated what means of destruction are used by these people; but in the examinations taken before Mr. Cracroft, the zemindars would appear to be concerned with the Goshains in these nefarious practices; and it is stated by a witness, that numbers of travellers have, for years, been made away with, in this quarter. The establishment of Chokies, on the highways principally infested by these miscreants, and the employment of the village watch in aid of these Chokies, are in every respect the most certain and efficient arrangements which can be devised for the suppression of this crime."

prepared at each zillah and city.

When the registers shall commence. Copies to be furnished half-yearly to the superintendents of police. Lists to be prepared half-yearly or oftener, and transmitted by the magistrate to the landholders, with warrants for the apprehension of the persons named therein.

Nos. 1, 2, and 3,<sup>1</sup> registers of the names of the following descriptions of persons: first, register of convicts who have broken jail, or have otherwise effected their escape; second, ditto of persons, for the apprehension of whom proclamations may have been issued under the provisions of Regulation 9, 1808; thirdly, ditto of persons charged with or suspected of the commission of specific crimes of a heinous nature, who may have eluded the pursuits of justice. *Second.* The registers above prescribed shall commence from the 1st day of January, 1812; they shall be regularly revised and kept up in the Persian language by the several magistrates, who shall forward copies of them on the 1st of January and the 1st of July in each year, to the superintendents of police respectively for their information. *Third.* At the expiration of every period of six months, reckoning from the 1st of January last, or oftener, when circumstances may appear to require it, the zillah and city magistrates shall cause lists to be prepared, from the abovementioned registers, of all persons therein named, who may not have been apprehended; and shall transmit copies of the said lists to the principal landholders, farmers, and managers of

<sup>1</sup> No. 1.

*Register of Convicts who have broken Jail, or have otherwise effected their escape.*

Name and Cast of the Person who have escaped from Jail.	Name of the Father.	Supposed Age.	Description of his Person.	Supposed usual Place of Residence.	Amount of Reward offered for his apprehension.	Date of apprehension, surrender, or ascertained death.

No. 2.

*Register of Persons, for the apprehension of whom Proclamations have been issued under the provisions of Regulation 9, 1808.*

Date of Proclamation.	Name and Cast of the Persons proclaimed	Name of the Father.	Supposed Age.	Description of his Person.	Supposed usual Place of Residence.	Amount of Reward offered for his apprehension.	Date of apprehension, surrender, or ascertained death.

land, together with warrants for the apprehension of the persons therein named, agreeably to the forms annexed to this regulation, Nos. 4, 5, and 6. Copies to be also sent to the darogahs.

## No. 3.

*Register of Persons charged with, or suspected of, the commission of specific crimes of a heinous nature, who may have eluded the pursuits of justice.*

Name and Cast of the Persons accused or suspected.	Name of the Father.	Supposed Age.	Description of his Person.	Supposed usual Place of Residence.	Amount of Reward offered for his apprehension.	Date of apprehension, surrender, or ascertained death.

## No. 4.

*Form of Warrant for the apprehension of Convicts who have escaped.*

No. of Warrant.



*To (name of the landholder, farmer, or local agent, to whom the warrant may be addressed, and the name of the estate, pergunnah, or mehal, of which he may be proprietor, farmer, or manager.)*

Whereas the person or persons (convicts) herein named, having effected his or their escape from the jail of the (zillah or city,) you are hereby authorized and required to apprehend and deliver over to the custody of the nearest or other police officer of Government, the said person or persons, all or any of whom shall be found within the limits of the estate, farm, or lands, committed to your management, or to give information to the magistrate or nearest police officer of Government, of the place of concealment, resort, or abode, of such person or persons, so that he or they may be apprehended. In this fail not. Dated

Name and Cast of the Persons, who have escaped from Jail.	Name of the Father.	Supposed Age.	Description of his Person.	Supposed usual Place of Residence.	Amount of Reward offered for his apprehension.	Date of apprehension, surrender, or ascertained death.

The number of persons included in the list, to be specified in English by the magistrate.  
Zillah, and date of warrant. (Signature of the magistrate.)



Magistrates to obtain written acknowledgments of the receipt of such lists and warrants by the landholders. All zemindars, &c. to whom such lists and warrants are transmitted authorized to apprehend the persons named therein.

Such persons when apprehended to be delivered in charge to the police officers.

Transcripts of the lists thus prepared shall be at the same time transmitted by the magistrates under their official seal and signature to the police darogahs for their information. *Fourth.* The magistrates shall be careful to obtain from the landholders, farmers, and managers of land, or from their representatives, to whom the said lists and warrants may be delivered, written acknowledgments of the receipt of them. *Fifth.* All zemindars, talookdars, and other proprietors of lands, whether malgoozary or lakeraj; all sudder farmers and under renters of land of every description; all najbs and other local agents; all native officers employed in the collection of the revenues and rents of land on the part of Government, or of the court of wards, to whom the lists and warrants mentioned in the preceding clauses of this regulation shall have been delivered, are hereby authorized either to cause the immediate apprehension of any of the persons named in either of the said lists, who may be found within the limits of the estates held or managed by them; or to apply to the nearest police officer for any aid which may be required in the execution of that duty; or simply to communicate to such officer such information as may have been obtained respecting the place to which the persons in question may resort, or in which they may be concealed. *Sixth.* Persons who may be apprehended under the provisions of this regulation, shall be delivered as speedily as possible into the charge of the nearest darogah or other officer of police for the purpose of being forwarded under safe custody to the magistrate, and an acknowledgment shall uniformly be given by such darogah or other officer of police, specifying the names of the prisoners, and the date on which they were delivered into his charge.

#### No. 5.

*Form of Warrant for the apprehension of Persons proclaimed under Regulation 9, 1808.*

No. of Warrant.

Seal of the Court.

*To (name of the landholder, farmer, or local agent, to whom the Warrant may be addressed, and the name of the estate, pergunnah, or mehal, of which he may be proprietor, farmer, or manager.)*

Whereas proclamation has been duly made in conformity with the provisions of Regulation 9, 1808; requiring the appearance before the magistrate of (zillah or city,) of the person or persons herein named, and the said person or persons having failed to attend at the cutcherry of the magistrate, according to the exigence of the said proclamation, you are hereby authorized and required to apprehend and to deliver into the custody of the nearest or other police officer of Government, the person or persons herein named, should all or any of them be found within the limits of your estate, farm, or lands, or to give information to the magistrate or nearest police officer of the place of concealment, or abode of such person or persons, so that he or they may be apprehended. In this fail not.

Dated

Date of Proclamation.	Name and Cast of the Persons proclaimed.	Name of the Father.	Supposed Age.	Description of his Person.	Supposed usual place of Residence.	Amount of Reward offered for his apprehension.	Date of apprehension, surrender, or ascertained Death.

The number of Persons, included in the list, to be specified in English by the Magistrate.

Zillah, and date of Warrant.

(Signature of the Magistrate.)

*Seventh.* The several zemindars, farmers, and local agents, to whom warrants and lists of public offenders shall have been furnished under this regulation, are hereby required to transmit to the magistrates on the 30th June and 31st of December, in each succeeding year, returns according to the annexed form No. 7,<sup>1</sup> of all persons who may have been apprehended by them, or by

Zemindars,  
&c. to furnish  
half yearly re-  
ports of per-  
sons so appre-  
hended.

## No. 6.

*Form of Warrant for the apprehension of persons charged with specific crimes, who may have eluded the pursuit of justice.*

No. of Warrant.

Seal of the  
Court.

*To (name of the landholder, farmer or local agent, to whom the Warrant may be addressed, and the name of the estate, pergunnah, or mehal, of which he may be proprietor, farmer, or manager.)*

Whereas the person or persons herein named, have been charged on oath before the magistrate of (zillah or city,) with the crimes herein specified, and whereas the magistrate has strong grounds to suspect that such person or persons have been concerned as principals or accessaries in the perpetration of the said crimes, and the appearance of such person or persons being required at the cutcherry of the magistrate of the aforesaid (zillah or city) to answer to the matter alleged against them, you are hereby authorized and directed to apprehend and to deliver into the custody of the nearest or other police officer of Government, the person or persons herein named, should all or any of them be found within the limits of your estate, farm, or lands, or to give information to the magistrate, or nearest police officer, of the place of concealment or abode of such person or persons, so that he or they may be apprehended. In this fail not. Dated

Name and Cast of the Persons accused or suspected.	Name of the Father.	Supposed Age.	Description of his Person.	Supposed usual place of Residence.	Amount of Reward offered for his apprehension.	Date of apprehension, surrender, or ascertained Death.

The number of Persons, included in the list, to be specified in English by the Magistrate.  
Zillah, and date of Warrant. *(Signature of the Magistrate.)*

## No. 7.

*Half Yearly Return of persons apprehended under the provisions of Regulation 3, 1812, by (name of zemindar, farmer, local agent or police darogah) of (name of estate, farm, or thannah) of (zillah or city jurisdiction.)*

Numbers and dates of Warrants, under which apprehended.	Name of Persons apprehended.			Date of apprehension.
	Persons who had escaped.	Convicts proclaimed.	Persons who have eluded the process of the Court.	

Darogahs to furnish reports of such persons apprehended by them.

Section 10.  
Magistrates to cause the zemindars, &c. to be informed that they will be held guiltless of any consequences ensuing from resistance to the execution of such warrants.

Cases of such resistance to be punished as prescribed for resistance to other process of the courts.

Section 11.  
Zemindars, &c. to be informed that they will not be required to prosecute or attend the courts in such cases.

Evidence as to persons so apprehended to be procured through the regular police officers.

Section 12.  
Penalties for neglect or misconduct of zemindars, &c. in the performance of the duty herein prescribed.

Section 13.  
Magistrates

means of information given by them to any police officer during the preceding six months; counterparts of which returns shall at the same time be transmitted by the several zemindars, farmers, or local agents, by means of the public dawks, to the office of the superintendent of the police.

*Eighth.* In like manner the several darogahs shall transmit, at the periods above specified, returns of all persons named in the lists with which they had been furnished, who may have been apprehended by them during the preceding six months, accompanied by any explanation which they may wish to offer in the event of no persons having been apprehended; copies of the prescribed returns and explanations shall at the same time be forwarded by the police darogahs, by means of the public dawks, to the office of the superintendent of police, and such returns are to be invariably made, whether any persons shall have been apprehended or otherwise, and shall be dispatched by the darogahs from their respective thannahs, on or before the 15th of the month of January and July of each year." § 10. "*First.* The zillah and city magistrates shall cause it to be explained to all persons to whom warrants shall be granted for the apprehension of persons under the provisions of this regulation, that if, in the legal execution of such warrants, either by themselves or by any person or persons acting under their authority, any resistance be made by the party named in the warrant, or by any other person, (the said warrant being shown to the party so resisting) such zemindar, farmer, or local agent, or other person acting under their authority, by whom the warrant may be executed, will be held guiltless with respect to any consequences which may ensue from such resistance to the execution thereof.

*Second.* It is further hereby declared, that any resistance by any person whatever, of any warrant or process of the court, issued under this regulation, shall be punishable in the same manner as is prescribed by the existing regulations, for resistance of process of the zillah and city magistrates."

§ 11. "*First.* The magistrates of the several zillahs and cities shall cause it to be carefully explained to the zemindars, farmers, and their local agents, to whom warrants shall be granted under this regulation, that they will not be required either to become prosecutors, or to attend the court, or to adduce evidence, or otherwise be subjected to any personal inconvenience or expense on account of any charge or prosecution, which may be depending or may be instituted against any person or persons legally apprehended by them under this regulation, or who may be apprehended by means of any information which they may furnish to any police officer of Government. *Second.* In the event of any evidence being required by the magistrate in regard to the general character of any party apprehended by means of any zemindar, farmer, or local agent, or in respect to any other point or matter which shall not be furnished by the proceedings which may have been previously held by the court, or by any other records of the magistrate's office, the magistrate shall cause such evidence to be procured by means of the regular police officers of Government."

§ 12. "Whenever any zillah or city magistrate shall have grounds to believe that any zemindar, farmer, or manager of land, shall have been guilty of any neglect or misconduct in the discharge of the duty imposed upon him by this regulation, the magistrate shall call upon him to answer to the charge; and if it shall appear upon a full and impartial inquiry, that the person accused has been actually guilty of the neglect or misconduct ascribed to him; the magistrate shall sentence the offender to pay such a fine to Government, and to suffer imprisonment for such a period of time as he may deem proportioned to the offence, not exceeding however the limitation prescribed by Section 19, Regulation 9, 1807, viz. imprisonment for six months, and a fine of rupees 200, commutable, if not paid, to imprisonment for a further period not exceeding six months longer." § 13. "The

magistrates of the several zillahs and cities are hereby empowered to grant lists and warrants for the apprehension of any persons of the description of those described in Clause Third, Section 9, of this regulation, prepared in the manner prescribed, to any individual with his consent, not being a zemindar, farmer, or local agent for the management of lands, or regular police officer of Government; and the provisions of this regulation shall be held applicable to the legal execution of any warrant of the magistrate by any person so employed."

may grant such lists and warrants to persons not being zemindars, &c. with their own consent, and these rules declared applicable to such persons.

By Sections 3 and 4, of Regulation 6, 1796, (re-enacted for the ceded provinces in Sections 20 and 21, of Regulation 8, 1803) provision was made for the pardon of accessories to crimes of a heinous nature, on condition of their making a full disclosure of every circumstance within their knowledge, such as might lead to the apprehension or conviction of the principal offender or offenders. The magistrates and judges of circuit were directed to report to the nizamat adawlut whenever it might appear expedient to tender an offer of pardon for this purpose; communicating, at the same time, all the information they might possess, respecting the circumstances of the case. The court of nizamat adawlut, concurring in the expediency of the proposed offer of pardon, were to submit the same to the Governor General in Council; and if authorized by him, on the condition of its being fulfilled, were to confirm it by a written certificate, under the signature of their register and the seal of the court.<sup>1</sup> These provisions, however, were rescinded by

Provision made by R. 6 1796, for pardon of accessories to heinous crimes on condition of a full disclosure of circumstances.

But these provisions rescinded by R 14, 1810, s 2, and amended rules substituted in Section 5, of this regulation.

<sup>1</sup> The following circular letter, on the subject of the regulation cited, was written to the courts of circuit, (and directed to be communicated to the magistrates) by order of the nizamat adawlut, on the 22d July, 1802.

"The evidence of accomplices being insufficient, under the Mohummudan law, to prove any criminal charge, though admitted in some degree to corroborate other evidence; it has appeared to the court of nizamat adawlut, from the trials which have come before them, in which an offer of pardon has been made in pursuance of Regulation 6, 1796, for the conviction of principal offenders, that such offer is seldom of any effect for the purpose intended; whilst, at the same time, the frequent pardon of acknowledged accomplices in murder, gang robbery, and other heinous crimes, is obviously objectionable and repugnant to the ends of justice. The court have therefore determined, in the exercise of the discretion vested in them by the above regulation, to restrict their applications to the Governor General in Council, for an offer of pardon to accomplices as follows.

"*First.* To cases wherein the zillah or city magistrates may judge it advisable to propose an offer of pardon, on the conditions specified in Section 3, Regulation 6, 1796, to an accomplice in any of the crimes therein described, with a view to the discovery and apprehension of the principal, or several of the persons by whom such crimes may have been committed, or for the discovery of facts and circumstances, which may assist in the conviction of the principal offenders.

"*Secondly.* To cases in which the judges of the courts of circuit may deem it expedient, on consultation with their law officers, to tender an offer of pardon, on the prescribed condition, to any prisoner charged as an accomplice, with a view to have his evidence against the principal offender, or offenders, or for any cause which, in the judgment of the court of circuit, may render it advisable to propose such offer of pardon, under the provisions contained in Regulation 6, 1796. In the cases last stated, the judge of the court of circuit, before whom the trial may be held, will, of course, address the nizamat adawlut, as directed by Section 4, Regulation 6, 1796; and in the former cases, the zillah and city magistrates will make their reports to the court of nizamat adawlut as hitherto; but, upon obtaining the sanction of the Governor General in Council, to an offer of pardon, in such cases, viz. when the party is to be examined as an informer, not as a witness, instead of leaving it to the court of circuit to examine him, they are themselves to take his examination, without oath, and to submit it, with the proceedings on his trial, to the court of circuit; who, if he shall be found to have fulfilled the condition of his pardon, by a full disclosure of every circumstance within his knowledge, relative to the commission of the crime and the

In what cases the nizamat adawlut may authorize the conditional offer of a pardon to one or more persons supposed to have been concerned in, or privy to, a heinous offence.

And pardon how to be confirmed in such cases. Magistrates, and judges of circuit, how to proceed when it may appear expedient to offer a conditional pardon for the purpose stated.

Police darogahs, and other native officers, prohibited from encouraging any person to confess a criminal charge, or make any discovery relative thereto.

And magistrates restricted from holding out such encouragement, except in special cases. Monthly reports from the magistrates to the nizamat adawlut required by R. 9, 1793, § 28, 30; and R. 6, 1803, § 27, 29.

Section 2, of Regulation 14, 1810; and the following amended rules were substituted in Section 5, of that regulation:—"First. In cases of a heinous nature, such as murder, robbery, and arson, when the principal offender, or offenders, may not have been apprehended and convicted, the court of nizamat adawlut, if it appear advisable, with a view to the discovery, apprehension, or conviction, of the principal offender, or offenders, may authorize the offer of a pardon to one or more persons supposed to have been directly or indirectly concerned in, or privy to, the offence, on condition of their making a full disclosure of the whole of the facts and circumstances within their knowledge, relative to the crime committed, and the persons concerned in the perpetration of it; and, on such condition being fulfilled, shall confirm the pardon so tendered, by a written certificate under the seal of the court and signature of the register, to be delivered to the party entitled thereto. *Second.* The zillah and city magistrates, and the judges of the courts of circuit, who may think it expedient to make a conditional offer of pardon in any instance, for the purpose above stated, shall report the same for the consideration of the court of nizamat adawlut; with all information obtained respecting the privy, or other criminality, of the person for whom the pardon is proposed; and so much of the circumstances of the case as may be necessary to enable the court of nizamat adawlut to determine upon the expediency of authorizing the conditional pardon recommended. *Third.* No police darogah, or other native officer, shall, on any occasion, or under any pretext whatever, encourage a person apprehended upon a criminal charge, to confess the same, or to make any discovery relative thereto, in expectation of obtaining thereby a pardon or mitigation of punishment; and the zillah and city magistrates are prohibited from holding out any encouragement of this nature, without obtaining the previous sanction of the nizamat adawlut; except in cases of an atrocious nature, and the most urgent necessity, which may not admit of such previous reference without endangering the escape of the principal offender or offenders."

The magistrates are required by Sections 28 and 30, of Regulation 9, 1793, (re-enacted for the ceded provinces in Sections 27 and 29, of Regulation 6, 1803) to transmit to the register of the nizamat adawlut the following monthly reports, according to forms prescribed for them respectively:—

1. A report of persons apprehended in each month; specifying the name,

several persons concerned in it, are to report the same to the court of nizamat adawlut, for the purpose of obtaining a confirmation of his pardon in the mode prescribed by Section 3, Regulation 6, 1796.

"The court desire you will communicate the foregoing remarks and instructions to the several magistrates within your division; at the same time advising them that they are meant to be applied strictly to *accomplices*, or persons present at, aiding, or abetting, the commission of crimes, (without being the chief actors or actual perpetrators;) and are not intended to be applicable to accessaries, either before or after the fact, who may not have been present when the crime was committed, or by any means concerned in the perpetration of it. For any such accessaries, whose evidence can tend to the conviction of offenders charged with the crimes specified in Section 3, Regulation 6, 1796, and for whom the zillah and city magistrates, or courts of circuit, may judge it advisable to propose a conditional offer of pardon, under the provisions in that regulation, the court will have no objection (provided the report before them of the circumstances of the case may appear to require it) to apply for the sanction of the Governor General in Council to such pardon as heretofore."

Although Regulation 6, 1796, has been superseded by the provisions of Regulation 14, 1810, the instructions contained in the circular letter here cited are, in substance, considered to be still in force, as far as they are consistent with the regulation last mentioned. Vide Circ. Orders of the Niz. Adawlut, head—*Pardon of Accomplices*.

charge, and date of apprehension ; and whether the person has been released, punished, or ordered for trial before the court of circuit.

2. A report of casualties, (viz. removals to other stations, deaths, and escapes ; ) and of prisoners released, in each month.

3. A report of prisoners sentenced by the court of circuit in the current month.

4. A report of prisoners, whose trials are under reference to the nizamat adawlut.

5. A report of sentences received from the nizamat adawlut in the present month.

6. A report of prisoners under charge of the magistrate, to be tried by the court of circuit.

The whole of the above reports are to be dispatched so as to reach Calcutta by the 20th of the ensuing month.<sup>1</sup> The magistrates are also to transmit to the nizamat adawlut half yearly reports of convicts in confinement, under sentence, to be dispatched within twenty days after the completion of the session of the court of circuit. And in the month of January of each year, two annual reports are to be furnished by them ; viz. a report of all criminal cases depending before the magistrate and his assistants ; specifying the names of the accused ; whether in confinement or under bail ; the crime charged ; date of charge ; date of apprehension, or first appearance of the accused ; and explanations in any instances of considerable delay. 2dly. An abstract statement of the number of robberies and other crimes of a heinous nature, ascertained by the police officers, or otherwise, to have been committed within their respective jurisdictions, in the preceding English year ; the number of persons known, or supposed, to have been concerned in the commission of such crimes ; and the number apprehended and convicted, or committed for trial before the courts of circuit. To enable the magistrates to furnish this statement they are to require from their police officers a monthly report of heinous crimes committed within their respective jurisdictions ; the number of persons known, or supposed to have been concerned in the commission of them ; and when any have been apprehended, the number and names of the persons apprehended : remarks on the increase or decrease of any particular designation of crime, on the greater or less number of persons concerned, or apprehended, or on any other circumstance which may call for observation, are to be also inserted in the report : the object of which is to inform the nizamat adawlut of the crimes which may continue to prevail in different parts of the country, and of the efficiency of the measures adopted for the suppression of them.<sup>2</sup>

Half yearly reports required by R. 9, 1793, § 30, and R. 6, 1803, § 30. Annual reports required by R. 9, 1807, § 26, 26.

<sup>1</sup> By a circular order from the nizamat adawlut, addressed to the courts of circuit, and dated the 20th July, 1814, the magistrates were instructed to transmit the whole of their monthly and other periodical reports to the nizamat adawlut, through the courts of circuit ; who were, at the same time, directed to forward them, as soon as possible after the receipt of them, with any remarks which they may judge necessary. Various other instructions to the magistrates, relative to the periodical reports required to be furnished by them, in Persian, or in English, to the courts of circuit and nizamat adawlut, have, at different times, been issued by order of the nizamat adawlut, as detailed in the printed circular orders of that court, under the head of " Periodical and other reports to be furnished by magistrates and judges of circuit."

<sup>2</sup> With a similar view, and to enable the courts of circuit to judge of the progress made towards the suppression of crimes, the magistrates were instructed by a circular order from the nizamat adawlut, dated the 1st November, 1804, " to lay before the judge of circuit, at each jail delivery, a statement of crimes committed within their respective jurisdictions ; according to the form transmitted to them with the court's circular order of the 7th March, 1803 ;" being the same as that since included in Section 26, Regulation 9, 1807. See further instructions to magistrates, relative to

Circular orders of nizamat adawlut referred to for further details of reports which are required from the magistrates. Provision in R. 17, 1816, § 14, respecting escape of prisoners, or conduct of guards.

R. 13, 1797, § 2, 3, 4, re-enacted for ceded provinces in R. 12, 1803, § 17, 18, 19. In what cases the magistrates are authorized to employ their assistants, in the execution of any part of their prescribed duties.

Without giving a further detail of the reports which the magistrates are required, by the regulations in force, to transmit to the court of circuit, for the information of those courts, or of the nizamat adawlut, (as more fully stated, with the forms now in use, in the printed circular orders of the latter court) it will be sufficient to add, on this subject, that with a view to relieve the nizamat adawlut from a part of its miscellaneous business, relative to the escape of prisoners, it is directed in the first clause of Section 14, Regulation 17, 1816, "that all proceedings held by magistrates in regard to the escape of prisoners, as well as any proceedings respecting the conduct of the guards, from whose custody the escape may have been effected, shall henceforward be submitted for the inspection and orders of the court of circuit, at the time of sessions."

The zillah and city magistrates are authorized to employ their assistants (being covenanted servants of the company) "in the execution of such part of their prescribed duties, as, from the extent of their general business, or other cause, they may be unable to give due attention to themselves; provided that previously to any assistant's entering upon the exercise of judicial authority, he shall take and subscribe an oath, corresponding with that prescribed to the magistrates." Assistants so authorized and qualified to act as magistrates, are to be guided by the regulations in force, as far as the same

the prescribed statement of crimes, in circular letter of nizamat adawlut, dated 15th August, 1809. In this letter, the magistrates were desired not to confine their future statements to the reports of their police officers; but to endeavour to acquire a more accurate knowledge of the number of crimes committed, from other channels of information; especially from the landholders and farmers, and their local agents; and to be careful that the abstracts transmitted by them include the whole of the crimes known to have been committed, whether any of the offenders have been apprehended, or not. A new form of statement was also prescribed by the nizamat adawlut, on the 27th March, 1810, to be substituted for that contained in Section 26, Regulation 9, 1807. Vide Circ. Order referred to, No. 11. The subjoined abstracts of the latest statements, to which immediate access can be had, are taken from the official reports of the superintendents of police for the year 1816; which exhibit a comparative view of the number of heinous crimes committed in the upper and lower provinces respectively, in the years 1815 and 1816, under the following heads:—

*Upper, or Western Provinces, comprising the circuit divisions of Bareilly and Benares.*

	1815.	1816.
Dakottee; or gang-robbery, with murder	45	22
Ditto, with wounding	53	51
Ditto, without murder or wounding	32	22
Ditto, on a river	1	—
Total of gang-robberies	131	95
Highway robbery, by horsemen	61	28
Ditto, by footpads	395	401
Murder, without robbery	212	251
Ditto, by Thugs	68	68
Homicide, not amounting to murder	54	52
Burglary	3751	4928
Theft	9304	11791
Violent affrays	134	100
Number of persons supposed to have been concerned in the crimes above stated	35,881	33,386
Computed value of property robbed, or stolen, in rupees	386,151	560,809
Ditto of property recovered	31,713	74,063

may be applicable to the duties committed to them : and are vested with the same powers as the magistrate, for the performance of such duties, except that they are not to exercise the additional powers of punishment, which were vested in the magistrates by Section 19, Regulation 9, 1807 ; but are to be governed in their judgments by the restrictions contained in Sections 8 and 9, Regulation 9, 1793, (re-enacted for the ceded provinces by Sections 8 and 9, Regulation 6, 1803,) with the following modifications. In the cases of petty offences, such as abusive language, calumny, and inconsiderable assaults or affrays, provided for by the first of these sections, if it appear proper to impose the fine thereby authorized, in addition to fifteen days imprisonment, both the stated fine and imprisonment may be adjudged ; with an eventual

R. 9, 1807, § 20.  
Limitation of  
judicial powers  
to be exercised by the  
assistant.

*Lower Provinces, comprising the circuit divisions of Calcutta, Dacca, Moorshedabad, and Patna.*

	1815.	1816.
Dakoitee, or gang robbery, with murder - - - - -	25	13
Ditto, with torture - - - - -	33	21
Ditto, with wounding - - - - -	70	76
Ditto, without murder, torture, or wounding - - - - -	148	170
Ditto, on rivers - - - - -	16	22
Total of gang robberies - - - - -	294	303
Murder, without robbery - - - - -	205	189
Homicide, not amounting to murder - - - - -	52	90
Arson - - - - -	—	23
Highway robbery - - - - -	83	94
Burglary - - - - -	8383	9033
Thefts exceeding ten rupees, or attended with aggravating circumstances - - - - -	2074	2196
Receiving stolen property - - - - -	101	30
Violent affrays - - - - -	84	83
Number of persons supposed to have been concerned } in the crimes above stated - - - - -	26,842	34,482
Computed value of property robbed, or stolen, in rupees - - - - -	446,230	399,581
Ditto of property recovered - - - - -	32,337	41,787

The reports of the superintendents of police for the years 1816 contain also statements of the number of prisoners in confinement, in the several zillah and city jails, on the 31st December, 1816 ; of which the following is an abstract :—

	Upper Provinces.	Lower Provinces.
Convicts under sentence of the courts of circuit, and nizamat adawlut - - - - -	3296	5153
Persons required to find security for good behaviour by order of the courts of circuit, and nizamat adawlut - - - - -	250	2323
Convicts sentenced by the magistrates to temporary imprisonment - - - - -	1739	2530
Persons required to find security, by order of the magistrates - - - - -	789	2032
Prisoners committed for trial before the courts of circuit, and nizamat adawlut - - - - -	1092	1371
Persons in custody, during examination before the magistrates - - - - -	841	773
Total number of Prisoners - - - - -	8007	14,182

The stated number of this class of prisoners, has, doubtless, been considerably reduced under the provisions of Regulation 8, 1818 ; and the measures adopted, in conformity thereto, for revising the cases of persons in confinement, under requisition of security.



Assistant how to proceed, if the case appear to require a more severe punishment than what he is authorized to adjudge.

K. 9, 1807, § 21. In what manner the magistrate is to refer criminal charges to his assistant, and in what cases, to examine, or revise, the proceedings held by his assistant.

R. 4, 1806, § 21; explained by R. 5, 1806, § 4. Collector of the tax on pilgrims, at Juggurnauth, declared assistant to the magistrate of Cuttack, and authorized to act accordingly.

General rule of duty for the registers and assistants to the civil and criminal courts, in R. 13, 1793, § 5; and R. 12, 1803, § 5. Provision for cases of neglect or misconduct by assistants to magistrates, in R. 13, 1793, § 16; and R. 12, 1803, § 13. Similar provisions in R. 9, 1793, § 63, and R. 7, 1803, § 10.

commutation of the fine, if not paid, to further imprisonment, for a period of fifteen days; making the entire term of imprisonment, if the fine be not paid, one month of thirty days. In like manner, in charges of petty thefts, provided for by the section last mentioned, if it appear just and requisite, on consideration of the circumstances of the case, to sentence the offender to one month's imprisonment, in addition to the stated corporal punishment of thirty rattans, or of any part thereof, both corporal punishment and imprisonment may be adjudged accordingly. In any case referred to an assistant, wherein the offence proved against the prisoner may appear to require a more severe punishment than he is authorized to adjudge, he is not to pass any sentence; but is to submit his proceedings to the magistrate; who, after holding any further proceedings he may deem necessary, will, if satisfied of the guilt of the prisoner, either pass sentence upon him, or commit or hold him to bail for trial before the court of circuit, according to the nature and circumstances of the case. Whenever a complaint, or charge, of a criminal nature, is referred by a magistrate to his assistant, "the order of reference is to be recorded on the magistrate's proceedings, with instructions, whether to submit the proceedings held upon the examination for the magistrate's decision; or whether the determination upon the charge is to be passed, by the assistant, if it be such as he is authorized to determine, under the regulations. As far as the general duties of the magistrates may admit, they are directed to examine the proceedings held by their assistants in such cases, and to pass judgment thereupon themselves; and in all instances wherein the sentence may be passed by an assistant, if the magistrate, on representation made to him, without unnecessary delay, shall see cause to revise the proceedings held by the assistant, and shall disapprove the judgment given by the latter, he is authorized and required to annul the same, and to pass such further sentence, or order, as may appear just and conformable to the regulations." The collector of the tax on pilgrims, at the temple of Juggurnauth, is declared to be, ex-officio, assistant to the magistrate of zillah Cuttack; and competent to exercise all the powers vested in the head assistants to the zillah and city magistrates. "The person, by whom these powers may be exercised, is required at all times to give every attention to the religious opinions of the Hindoos, and to the particular institutions of the temple of Juggurnauth, which may be consistent with the general regulations; and with the maintenance of peace and good order at the temple, and in its vicinity; and he shall on no account suffer his peons or ministerial officers to enter the precincts of the temple when employed in serving process, or in the execution of any other duty entrusted to them as officers of police."

The general rule prescribed to the registers and assistants to the civil and criminal courts, in Section 5, Regulation 13, 1793, (re-enacted for the ceded provinces in Section 5, Regulation 12, 1803) viz. that "they are to perform all such official acts as may be prescribed to them by the judges," and magistrates; has been already noticed under the head of *Duties of Registers and Assistants to the Civil Courts*. The rules contained in Regulations 17, 1813, and 8, 1817, for the investigation of charges of corruption, extortion, and other charges of a serious nature, against the European public officers employed in the judicial department, have likewise been stated. It remains only to mention that if any assistant to a magistrate be guilty of neglect, or misconduct, in the discharge of his duty, the magistrate is enjoined, by Section 10, Regulation 13, 1793, (re-enacted for the ceded provinces in Section 13, Regulation 12, 1803) to report the same to the court of nizamat adawlut. And, in like manner, the courts of circuit are directed, by Section

63, Regulation 9, 1793, (re-enacted for the ceded provinces in Section 30, of Regulation 7, 1803) to report to the nizamat adawlut "every instance in which it shall appear to them that the magistrates have been guilty of neglect, or misconduct, in the discharge of their duty;" as well as "whenever the magistrates may omit or refuse to obey their orders."<sup>1</sup>

for neglect, or misconduct, of magistrates in disobedience to the orders of the courts of circuit.

### *Courts of Circuit.*

There are six courts of circuit, each consisting of the four judges who compose the provincial court of appeal, and of the cauzee and mooffee attached to that court. The registers and assistants to the provincial courts are likewise registers and assistants to the court of circuit. And the same native officers are attached to both courts. A distinct form of oath is prescribed to be taken by the judges, registers, and assistants, of the courts of circuit; and a solemn declaration is required to be made by the law officers, in conformity with the provisions of Regulation 18, 1817, already cited.<sup>2</sup> The following zillah and city jurisdictions are included in the division of each

R. 9, 1793, § 31 to 39; R. 16, 1795, § 5 to 12, R. 7, 1803, § 2 to 10; R. 5, 1814, § 2. Number and constitution of the courts of circuit. Oaths to be taken by the judges, registers, and assistants. What zillah and city jurisdic-

<sup>1</sup> The rules contained in Regulations 5, 1804, and 8, 1809, for the appointment and removal of the native officers in the judicial department, as well as in the revenue and commercial departments, are stated, at length, in the second volume of this Analysis, page 153 and sequel. The rules in force for receiving and trying charges of corruption or extortion against the native officers in the judicial department, have likewise been cited in the present volume, pages 169 and 170.

<sup>2</sup> Under the head of *Native Officers of the Courts of Judicature*, page 167. The oath prescribed to the judges, registers, and assistants, of the provincial courts of appeal, corresponds in substance with the form of oath prescribed for the judges of the zillah and city courts, and stated at length in a note to page 29. The judges of the courts of circuit, previous to entering upon the execution of the duties of their office, are directed to take and subscribe the following oath before the Governor General in Council, or such person as he may commission to administer it:

"I, A. B. solemnly swear, that I will truly and faithfully execute the duties of judge of the court of circuit for the division of \_\_\_\_\_, that I will administer justice according to the regulations that have been or may be enacted by the Governor General in Council, to the best of my ability, knowledge, and judgment, without fear, favor, promise or hope of reward; and that I will not receive, directly or indirectly, any present, or nuzzer, either in money or in effects of any kind, from any party, in any suit or prosecution, or from any person whomsoever on account of any suit or prosecution to be instituted, or which may be depending or have been decided in the court of circuit of which I am judge; nor will I knowingly permit any person or persons under my authority, or in my immediate service, to receive, directly or indirectly, any present or nuzzer, either in money or in effects of any kind, from any party in any suit or prosecution, or from any person whomsoever, on account of any suit or prosecution to be instituted, or which may be depending or have been decided in the said court; nor will I, directly or indirectly, derive any advantage or emolument from my station, excepting such as the orders of Government do or may authorize. So HELP ME GOD."

The registers and the assistants to the registers of the courts of circuit, in the several divisions, are directed, on entering upon the execution of the duties of their office, to take and subscribe the following oath before the court of circuit to which they may be respectively attached:

"I, A. B. register (or assistant to the register) to the court of circuit for the division of \_\_\_\_\_, solemnly swear, that I will truly and faithfully perform the duties of register (or assistant to the register) to this court, according to the best of my knowledge and ability, and that I will not receive, directly or indirectly, any present or nuzzer, either in money or in effects of any kind, from any party in any suit or prose-

dictions included in the division of each court of circuit.

court of circuit; and are numbered in the order wherein the half yearly jail deliveries are directed to be held by the rules now in force; except the four cities of Dacca, Moorshedabad, Patna, and Benares; zillahs Bareilly and the 24-Pergunnahs; and the suburbs of Calcutta; the jail delivery of which is held monthly.

#### *Calcutta Division.*

R. 1, 1806, § 4; 1. Burdwan. 2. Jungle Mehals. 3. Midnapore. 4. Cuttack.  
R. 14, 1814, § 3. 5. Jessore. 6. Nuddea. 7. Hooghly. 8. 24-Pergunnahs. 9. Suburbs of Calcutta.

#### *Dacca Division.*

R. 3, 1798, § 6. 1. Mymensing. 2. Sylhet. 3. Tipperah. 4. Chittagong. 5. Backergunge. 6. Dacca Jelalpoore. 7. City of Dacca.

#### *Moorshedabad Division.*

R. 1, 1806, § 4. 1. Bhagulpore. 2. Purnea. 3. Dinagepore. 4. Rungpore. 5. Rajeshahy. 6. Beerbhoom. 7. City of Moorshedabad.

#### *Patna Division.*

R. 2, 1804, § 7. 1. Ramghur. 2. Behar. 3. Tirhoot. 4. Sarun. 5. Shahabad.  
Patna division. 6. City of Patna.

#### *Benares Division.*

R. 1, 1806, § 5. 1. Mirzapore. 2. Allahabad. 3 and 4. South and North Divisions of Bundelcund.<sup>1</sup> 5. Juanpore. 6. Goruckpore. 7. City of Benares.

#### *Bareilly Division.*

R. 1, 1806, § 5. 1. Cawnpore. 2. Furruckabad. 3. Etawah. 4. Agra. 5. Allyghur.  
Bareilly division. 6. South Saharunpore. 7. North Saharunpore. 8. Moradabad. 9. Bareilly.

R. 2, 1799. Preamble. Reasons for a monthly jail delivery in the cities of Dacca, Moorshedabad, Patna, and Benares. And for extending this arrangement to the town and zillah of Bareilly by R. 6, 1805, § 14. As well as to the 24-Pergunnahs, (including the suburbs of Calcutta) by R. 11, 1814, § 4.

The jail deliveries of the four principal cities were ordered to be held monthly, partly in consideration of the convenience of the prosecutors and witnesses, who in the cities are frequently foreign merchants; or other strangers, who could not wait the period of a half yearly session without injury to their private concerns. The facility arising from one or more of the judges of circuit being always upon the spot, and the propriety of all persons, charged with criminal offences, being brought to trial as soon as circumstances admit, must also have influenced the adoption of this measure; and an extension of it to the town and zillah of Bareilly, at which place the judges of circuit for that division reside; as well as to the 24-Pergunnahs and suburbs of Calcutta; both of which are contiguous to the station of the Calcutta court of circuit. The following periods are fixed for the commencement of each circuit, with reference to the state of the country, and the convenience of travelling, at different seasons of the year. In the Dacca, Benares, and Bareilly divisions,

cution to be instituted, or which may be depending, or have been decided, in the court of circuit of which I am register (or to the register of which I am assistant), nor will I, directly or indirectly, derive any advantage or emolument whatever from my office, excepting such as the orders of the Governor General in Council do or may authorize. So HELP ME GOD."

<sup>1</sup> The subdivision of Bundelcund into two zillahs has not, I believe, been expressly provided for in any regulation; and I am not certain in what order the jail deliveries of the southern and northern divisions are directed to be holden.

on the 1st January and 1st July. In the Calcutta division on the 1st April and 1st October. In the Moorshedabad division, on the 1st March and 1st September. In the Patna division, on the 1st June and 1st December. These periods, and the fixed order of succession in holding the jail deliveries, (which was established to obviate the hardship sustained by particular prisoners, when the jail deliveries were held at unequal periods, and without any certain order of succession) are not to be deviated from by the courts of circuit, without the sanction of the nizamat adawlut; unless the periods fixed for commencing the circuit happen to fall within the Dussarah, or Mohurram, vacation, in which case the commencement of the circuit is to be postponed until the expiration of the vacation; or as long as the magistrate of the zillah, where the first jail delivery is to be held, may, on a reference from the court of circuit, state to be necessary on this account. By Section 41, Regulation 9, 1793, the judges of circuit, in each division, were ordered to form two courts, to proceed upon the circuits; one consisting of the first judge, accompanied by the register and mooftee; the other of the second and third judges, attended by the senior assistant and cauzee. The provincial court being consequently shut during the absence of the judges, and much inconvenience to the parties in civil causes arising therefrom, it was provided by Regulation 7, 1794, that two of the judges should hold the two courts of circuit, whilst the third should remain, in rotation, at the sudder station, to carry on the current business of the civil court. Two judges however being requisite to form a court for the trial of appeals, and the period during which that number could sit together, whilst two of the three judges were obliged to go upon the circuit half-yearly, being found insufficient for the decision of the appeals preferred; it was necessary to make further provision for this purpose. It was therefore enacted by Section 2, of Regulation 3, 1797, (re-enacted for the ceded provinces in Section 12, Regulation 7, 1803,) that instead of two judges of circuit holding the jail deliveries of each division at the same time, one judge only should proceed upon the circuit; and it being deemed expedient that the senior judge should always continue at the sudder station, the second and third judges, in rotation, were ordered to hold the half-yearly jail deliveries, attended by the cauzee and mooftee, alternately. This rule was subsequently modified by Section 8, of Regulation 1, 1806, which directed that "the senior judge of each division shall in future proceed in rotation on the circuit for the purpose of holding the half-yearly jail-deliveries at the several stations, within the jurisdiction of the court to which he is attached, in common with the other judges of that court, unless he shall be prevented by indisposition or other substantial cause; when the Governor General in Council, on receiving the necessary information on the subject through the nizamat adawlut, will order one of the other judges to proceed on the circuit, or will make such other provision for the discharge of that duty, as may appear to be most expedient." But the former rule was, in substance, restored by the 3d Section of Regulation 5, 1814, which is now in force, viz.

"*First.* Section 8, Regulation 1, 1806, and any other provisions which require, that, the senior judge of each division shall in future proceed in rotation on the circuit, for the purpose of holding the half-yearly jail deliveries at the several stations, &c. are hereby rescinded. *Second.* The duties of the circuit, including the jail deliveries at the principal stations, shall in ordinary cases be performed in regular succession by the second, third, and fourth judges of the said courts; and the first judge shall remain fixed for the conduct of the public business at the principal station, under such rules, as have been or may be established for that purpose; provided however, that nothing contained in this section, shall be construed to preclude the Governor Gene-

Periods fixed for half yearly jail deliveries of the other zillahs.

R. 3, 1797, § 3, R. 7, 1803, § 11, R. 2, 1801, § 3, R. 3, 1798, § 4 6; R. 8, 1805 § 14, R. 1, 1806, § 6.

Fixed period and succession of jail deliveries not to be deviated from without sanction of the nizamat adawlut.

Provision, for the annual vacations.

R. 9, 1793, § 41. Original provision for constituting two courts to proceed upon the circuit.

R. 7, 1794, § 2 3, 4. Subsequent rule, by which one judge was left at the sudder station.

Preamble to R. 3, 1797.

Necessity of further provision, for enabling two judges to sit in the court of appeal.

R. 3, 1797, § 12.

and R. 7, 1802, § 12.

Rule for second and third judges to proceed alternately on the circuit.

Modified by R. 1, 1806, § 8.

But rest of the rule in substance, by Reg. 5, 1814, § 3, which is now in force.

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PROVIDOR, IN what cases the first judge may be ordered to hold the sessions.

R. 1, 1806, § 7. In what case the nizamat adawlut may postpone the jail-delivery of any zillah or city, or direct it to be held at the station of a contiguous jurisdiction.

R. 3, 1797, § 6, and R. 7, 1803, § 14.

Notice to be given when the judge, whose turn it may be to proceed upon the circuit, is unable to perform it. R. 1, 1797, § 8, and R. 7, 1803, § 21.

Provision for non attendance of the law officer of the court of circuit from sickness or other cause. R. 7, 1794, § 9, confirmed by R. 2, 1804, § 6, R. 16, 1795, § 19. R. 8, 1805, § 14. Courts of circuit restricted from sitting upon Sundays. R. 2, 1799, § 2, R. 2, 1804, § 4, R. 8, 1805, § 14. And to hold monthly jail deliveries, on days when the court of appeal does not sit.

R. 9, 1793, § 40. R. 16, 1795, § 13.

R. 7, 1803, § 11. Judge of circuit holding the half yearly jail deliveries, where to proceed, and how long to remain at each station. Proceedings on trials before

ral in Council, or the nizamat adawlut, from ordering the first judge to hold the session of jail delivery at the principal station, or at any other station or stations, whenever any exigency may in the judgment of either of those authorities appear to require the services of the first judge of either of the provincial courts in the discharge of such duty."

It is further provided by Section 7, Regulation 1, 1806, that "it shall be competent to the court of nizamat adawlut, on information in any particular instance, that no person has been committed by a zillah or city magistrate for trial before the court of circuit, at the period for holding the jail delivery of such zillah or city, to postpone the session of the court of circuit for such zillah or city, till the period fixed by the regulations for the next ensuing jail delivery. And in like manner, whenever the number of persons committed, or held to bail, for trial before the court of circuit, at any particular station, shall be inconsiderable, and the conclusion of the circuit may be materially expedited by bringing such persons to trial at another contiguous station; or generally, when any special cause shall appear to render it expedient that the persons committed, or held to bail, by any particular magistrate, should be brought to trial at the session of the court of circuit held in the adjacent jurisdiction of another magistrate; it shall be competent to the nizamat adawlut, or to the Governor General in Council, to authorize and direct, that the persons committed, or held to bail, in such instances, be brought to trial before the court of circuit at the station which may appear to be most convenient. In such cases the proceedings of the magistrate by whom the prisoners may have been committed, or held to bail, shall be transmitted, with the prisoners, to the magistrate of the jurisdiction in which the session of the court of circuit may be held; and the latter magistrate shall perform the duties prescribed by the regulations, in bringing the prisoners, and proceedings, before the court of circuit, as well as in executing any orders of that court which the judge may deem it proper to direct to him, in preference to the magistrate by whom the prisoners shall have been committed, or held to bail."

In case of the death of the judge, whose turn it may be to proceed upon the circuit; or of his inability to perform the circuit, from sickness, or any other unavoidable impediment; the earliest notice is to be given to the Governor General in Council; who will make such provision for the case as he shall judge advisable. If, at any time, the law officer of the court of circuit be prevented by indisposition, or otherwise, from attending that court, whilst sitting at any zillah or city station, the Mohummudan law officer of the zillah or city court, at such station, is to officiate for him, as long as may be necessary, on such occasions. The whole of the courts of circuit are restricted from sitting upon Sundays on any occasion whatever; and the monthly jail deliveries of the four cities, zillah Bareilly, the twenty-four pergunnahs, and the suburbs of Calcutta, are ordered to be held on the days when the court of appeal may not sit; or in such manner as may occasion the least possible impediment to the business of that court.

The judge of circuit holding the half-yearly jail deliveries is directed to proceed to the place of residence of the magistrate of each zillah within the division: and, unless it be found indispensably necessary, from the non-attendance of any material evidence, or other sufficient cause, to postpone any trial till a future session, to remain at such station, until all prisoners committed, or held to bail, by the magistrate, for trial, shall have been tried, and sentence passed upon them, or their trials referred for the sentence of the nizamat adawlut. The proceedings on the trial of prisoners, before the

\* A question having been submitted to the nizamat adawlut, whether a prisoner committed by the magistrate, after the arrival of the court of circuit at his station, should

courts of circuit, are ordered to be conducted in the following manner. "The charge against the prisoner, his confession (which is always to be received with circumspection and tenderness) if he plead guilty, or, if he plead not guilty, the evidence on the part of the prosecutor, the prisoner's defence, and any evidence which he may have to adduce, being all heard before him, the cauzee or mooftee, (who is to be present during the whole of the trial)\* is to write at the end of the record of the proceedings the *futwá* (or exposition of the Mohummudan law) applicable to the circumstances of the case, and to attest it with his seal and signature." If the *futwá* of the law officer acquit the prisoner, and the judge, after attentively considering the evidence and circumstances of the case, concur in such acquittal; or if the *futwá* declare the prisoner to be convicted of the charge, or of any part of it, and the judge, on due consideration, concur in such conviction, and be empowered by the regulations to pass a final sentence on the case, without reference to the nizamat adawlut; he is to pass sentence accordingly; and to issue his warrant to the magistrate for the execution of it. If the judge of circuit disapprove the *futwá* given by his law officer, and have not been expressly

courts of circuit how to be conducted. R. 9, 1793, § 47. Extended to Benares by R. 16, 1795; § 22; re-enacted for each of provinces in R. 7, § 13. In what cases the judge of circuit is to pass a final sentence, and issue his warrant to the magistrate for the execution of it. R. 13, 1804, c. 1.

be tried at the session of the court of circuit then depending; or at the ensuing session; the court, by a circular letter from their register, dated the 30th November, 1796, expressed their opinion that "provided the witnesses are in attendance, and the trial is in every respect ready to be brought before the court of circuit, it should be immediately proceeded upon, in humanity to the prisoner, who must otherwise be kept in confinement till the ensuing jail delivery." On the 13th April, 1808, the courts of circuit were further instructed to "admit and try any commitments made during their residence at each zillah; except in cases where any material delay would occur in procuring the attendance of witnesses; or in other preparations for the trial." But to prevent the indefinite detention of the courts of circuit, by the trial of commitments made after their arrival at the zillah stations, the instructions above stated, were modified on the 27th December, 1810, by a circular order of the nizamat adawlut, "that the magistrates be restricted to one supplementary calendar."

\* The court of nizamat adawlut having observed, in several trials referred to them, that the prisoner's defence instead of being taken after the evidence for the prosecution, had been taken immediately after the charge of the prosecutor, the strict observance of the courts of circuit, of the order of proceeding pointed out in the regulation here cited, was received as a circular letter from the register of the nizamat court, dated 28th February, 1799.

\* This is the ordinary course of proceeding; but it having been deemed expedient (with reference to cases in which the law officers might be supposed to receive an undue bias from their religious tenets, or local prejudices) that the executive government should be empowered to dispense with their attendance and *futwa*, whenever it may appear advisable. The following provisions for this purpose were enacted in Sections 2, 3, and 4, of Regulation 1, 1810.

§ 2. "Whenever there may appear to be sufficient cause for dispensing with the attendance and *futwá* of the law officers of the courts of circuit upon a criminal trial, or trials, to be held before any of those courts, it shall be competent to the Governor General in Council, or to the executive government for the time being, to order the same; and an official communication of such order by the secretary to Government in the judicial department, shall be deemed sufficient authority for the trial, or trials, therein referred to, being held before the judge of the court of circuit, without the attendance or *futwá* of the law officers." § 3. "In such cases no sentence shall be passed by the judge of the court of circuit. But the proceedings on the trial, when completed, shall be transmitted, with the opinion of the judge on the evidence, and facts established, for the sentence of the court of nizamat adawlut." § 4. "In the event of any question of Mohummudan law arising upon such trials, the same shall be recorded upon the proceedings, for the information and decision of the court of nizamat adawlut. But if the question refer to the competency of a witness, such witness shall be examined, leaving the admission or ultimate rejection of the testimony so given to the consideration of the nizamat adawlut."

In what cases the proceedings upon the trial are to be referred to the nizamut adawlut.

Clause 2. And judge of circuit when to pass sentence, or not, in such cases.

Clause 3. Letters accompanying trials referred to the nizamut adawlut, what to

authorized by any regulation to pass sentence, notwithstanding such *futwá*, either for the punishment of the prisoner, or for his acquittal and discharge, with or without security; or if the prisoner be duly convicted, and liable to a sentence of perpetual imprisonment, or death; the proceedings upon the trial are to be referred for the sentence of the nizamut adawlut. In such cases, viz. in all trials referrible to the nizamut adawlut, it is directed that "if the judge of circuit disapprove the *futwá* given by his law officer; or if the prisoner or prisoners convicted, or any of the prisoners convicted in the same trial, be liable to a sentence of death; the judge shall not pass any sentence (except for the acquittal and discharge of any prisoners not convicted); but shall transmit the trial, with his opinion thereupon, for the sentence of the nizamut adawlut. If the judge of circuit concur with his law officer in the conviction of the prisoner, or prisoners, and none of them be liable to a sentence of death, the judge shall pass sentence on the prisoner or prisoners so convicted. But such sentences, in all trials referrible to the nizamut adawlut, shall not be deemed final, nor shall any warrant be issued for carrying the same into execution, until they be confirmed by the court of nizamut adawlut. Moreover, whenever the trial of a principal in any crime may be referred for the sentence or confirmation of the nizamut adawlut, and an accomplice in the same crime shall have been brought to trial and convicted, at the same time with the principal; the courts of circuit shall not carry into execution their sentence upon the accomplice so convicted; but shall wait the confirmation, or final sentence, of the nizamut adawlut, as well respecting the accomplice, as the principal. Provided, however, that this restriction be not understood to prevent the judges of the courts of circuit from passing a final sentence of acquittal upon any prisoners charged as accomplices, whom they may acquit of such charge, in concurrence with their law officers; or from directing the release of any prisoners so acquitted, notwithstanding the reference of the trial of the principal to the court of nizamut adawlut." It is further directed that "whenever the judges of circuit may refer to the nizamut adawlut the trial of a prisoner or prisoners, whom they may consider proper objects of capital punishment, under the second clause of Section 4, Regulation 53, 1803, (declaring the penalties of robbery by open violence) or of imprisonment for life under the third clause of that section; <sup>1</sup> or of a mitigation of punishment under the fifth clause; or of an extension, mitigation, or remission of punishment in any case whatever; they shall be careful to notice the same in their letters, accompanying the

<sup>1</sup> This clause has been rescinded by Section 2, of Regulation 8, 1808, cited under the head of *Amendments of the Mohummudan Criminal Law*. But Section 3, of that Regulation, declares all persons convicted of robbery by open violence, and not liable to a sentence of death, subject to imprisonment and transportation of life. The rules quoted from the second and third clause of Section 6, Regulation 53, 1803, are also repeated in Section 4, of Regulation 8, 1808, as follows—"The courts of circuit shall refer to the court of nizamut adawlut in the manner prescribed by the existing regulations, the trials of all persons convicted of the crime of robbery by open violence, and liable to the punishment declared in the preceding section. The judge of circuit, before whom the trial may be held, shall, in all cases, pass sentence for the stated punishment, if the prisoner appear to him, and to the law officer of the court of circuit to be duly convicted; whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence. But such sentence shall not be deemed final nor shall any warrant be issued for carrying the same into execution until it be confirmed by the court of nizamut adawlut. And if the judge of circuit be of opinion that there are grounds for a mitigation or remission of punishment, he shall state the same in his letter, to accompany the trial, as required by Clause Third, of Section 6, Regulation 53, 1803."

trials referred; and shall state at large the grounds of their judgment whether for or against the prisoner, with such of the facts and circumstances in evidence upon the trial, as may be necessary to explain the case of the prisoner, whose punishment is proposed to be extended, mitigated, or remitted."

The judges of the courts of circuit are ordered to refer to the Mohummudan law officers of their respective courts all questions on points of law, that may arise in the course of any trial, and respecting which no specific rules may have been enacted by the Governor General in Council. If the opinions delivered by the law officers appear contrary to the principles of justice, or to the provisions of the Mohummudan law, the judges are nevertheless to be guided by them; but after completing the trial, and obtaining the *futwá* of the law officer present thereupon, are, without passing sentence, to transmit the proceedings and *futwá* to the nizamat adawlut; with a letter, stating their objections, for the consideration and sentence of that court.

The prosecutor in trials before the court of circuit may be examined under a solemn declaration, if he be of the description of persons exempted from taking an oath; and is allowed the option of carrying on the prosecution in person, or by a vakeel duly appointed, excepting cases in which the Mohummudan law requires the prosecutor's appearance in person at the trial of the prisoner. The judge of circuit may however require the personal attendance of the prosecutor, in all cases wherein his deposition may be deemed necessary, as evidence upon the trial. But no Mohummudan or Hindoo women, of a rank and situation in life, which, according to the custom and prejudices of the country, would render it improper to compel them to appear in a court of justice, are to be made to attend in person. Whenever the prosecutrix, or any witness upon a trial, may be a woman of this description, and her evidence may be deemed necessary, (the case being such as to admit of its being taken by commission,) the judge is to depute persons to take it, in the manner prescribed by the Mohummudan law. If the attendance of any witness on the part of the prosecutor or prisoner, whose evidence the law may not allow to be taken by commission, cannot be procured; or if any witness cannot be found, or though attending, refuse to give evidence, the judge may postpone the trial until the next circuit, if there appear to be sufficient cause for so doing.<sup>1</sup> If the attendance, or evidence, of such witness cannot then be obtained, the judge of circuit may, in like manner, postpone the trial a second time. But if the judge and law officer be of opinion that the evidence of any such witness is not necessary, the trial is to be completed without it. The judges of circuit are expected however, in every instance, to make such inquiry as may be necessary to satisfy themselves, and the court of nizamat adawlut in cases referrible to that court, that all due measures have been taken to cause the attendance of the whole of the witnesses, both on the part of the prosecutor and the prisoner. In the examination of witnesses, the courts of circuit are required to observe the rules already stated with respect to witnesses examined by the magistrates. They are further directed to be careful to notice on their proceedings any material differences between the depositions of the same witnesses before them and the magistrates; and are to question the witnesses thereupon and record their answers. But the depositions taken before the magistrates are not to be read before the court of

R. 9, 1793, § 53, 54. Extended to Benares by R. 16, 1793; and re-enacted for ceded provinces by R. 7, 1803, § 22, 23. Courts of circuit to refer questions of law to their Mohummudan law officers; and to be guided by their opinions. Provision in case they shall not concur in such opinions. R. 9, 1793, § 48, 49; and R. 50, 1803, § 2, 3; re-enacted for ceded provinces in R. 7, 1803, § 16, 17 and R. 8, 1803, § 25. Further rule of proceeding relative to attendance and examination of prosecutors and witnesses.

R. 9, 1796, § 1. re-enacted for ceded provinces in R. 6, 1803, § 11.

R. 4, 1777, § 7 re-enacted for ceded provinces in R. 7, 1803, § 14.

<sup>1</sup> When a trial is postponed by a judge of circuit, for further evidence to be taken at a subsequent session, the judge taking the further evidence on such trial, is to complete the same, by passing sentence. This was established as a uniform rule of practice, by a circular letter, from the nizamat adawlut, to the courts of circuit, dated 9d Anril. 1812.



R. 50, 1803, § 2, re-enacted in R. 8, 1803, § 26.

Power vested in courts of circuit to punish witnesses not attending, or refusing to give evidence. R. 9, 1793, § 59; re-enacted in R. 7, 1803, § 28.

Also to order punishment for contempt of court. Provisions in R. 15, 1814.

circuit in the presence of the deponents, until they shall have been re-examined before the court of circuit. This court, as before observed, has the same power as the civil courts, of punishing, by fine and imprisonment, any witness duly summoned, who may not attend, or though attending, may refuse to give evidence and sign his deposition. The courts of circuit are further empowered to direct the magistrate to inflict corporal punishment with a rattan, not exceeding fifteen strokes, or imprisonment for any term not longer than fifteen days,<sup>1</sup> upon any person guilty of contempt of court in open court.

The sentences to be passed by the court of circuit, in cases of conviction, when the crime may be punishable by them, under the provisions of the Mohummudan law, or of any regulation passed in modification of it, or to supply its defects, have been already stated in the preceding section of this Analysis. But it will be proper to add, in this place, the following rules enacted in Regulation 15, 1814, with a view "to define the punishment to which persons convicted of two or more offences, shall in certain cases be subject."

Section 2. Discretion vested in the courts of circuit to reduce the prescribed penalties in cases of conviction of two or more distinct offences, when the aggregate punishment may exceed thirty nine stripes with a corah, and imprisonment for fourteen years; and the prisoner may not be liable, on any one of the charges established against him, to a sentence of death or imprisonment for life.

Principle applicable to cases wherein the prisoner convicted and punished at a former session, may be convicted at a subsequent session of another offence committed anterior to the first sentence.

§ 2. "First. Whenever a prisoner may be brought to trial before a court of circuit, for two or more distinct offences, included in separate commitments, and may be convicted, at the same session, of two or more offences, the prescribed penalties of which, under the regulations in force, may exceed, in the aggregate, thirty-nine stripes with a corah, and imprisonment for fourteen years, but may not, for the crime established against the prisoner on any one commitment, amount to death, or imprisonment for life, (in which case the trial would be referrible to the nizamat adawlut) the judge of circuit is authorized to reduce the prescribed punishments for the whole of the offences of which the prisoner may be so convicted, at the same session, so as not to exceed, in the aggregate, thirty-nine stripes with a corah, and imprisonment, in banishment from the district, for a term of fourteen years, provided he shall be of opinion, on consideration of the several acts of criminality established against the prisoner, and the circumstances of each case, that the punishment above specified is sufficient. If the judge of circuit however should be of opinion, that the prisoner is deserving of imprisonment for a longer period than fourteen years, he shall pass sentence, in the several cases, for the punishment prescribed by the regulations; (except that the number of stripes to be adjudged against a prisoner, at any one session of a court of circuit, shall not exceed thirty-nine) and shall transmit the proceedings on each case, with a report of the circumstances, and his sentiments on the punishment which should be inflicted upon the prisoner, for the final sentence or order of the court of nizamat adawlut. Second. The principle of the above clause shall be also considered applicable to cases, in which prisoners convicted and sentenced at a preceding session of a court of circuit, may be convicted at a subsequent session, of another offence committed before their first conviction and sentence. But it is not meant to apply to any new offence committed by a person, after his conviction of a former offence, whether the period of confinement to which he may have been sentenced for his former offence shall have expired at the time of his committing the subsequent offence or otherwise. Third. When a prisoner, committed or held to bail, for trial before a court of circuit, on two or more distinct charges,

<sup>1</sup> The period of imprisonment in the rule for the ceded provinces (Section 28, Regulation 7, 1803), is four months. But as the remainder of the section is taken *verbatim* from Section 59, Regulation 9, 1793, which is still in force for Bengal, Behar, Orissa, and Benares, this variation is supposed to have been accidental.

may be liable, on one or more convictions, to a sentence of imprisonment for fourteen years ; and the further charge or charges against the prisoner may not be such as would, on conviction, subject him to a sentence of death or imprisonment for life, it shall not be requisite for the judge of circuit to try such additional charge or charges, unless there shall appear to be special and sufficient cause for trying the same : provided, that whenever a judge of circuit may exercise the discretion thus vested in him, he shall report the same, with his reasons, to the court of nizamat adawlut, in the statement transmittible to that court, of sentences passed by the court of circuit ; or if the trial held upon the prisoner be on any account referrible to the nizamat adawlut, in the letter accompanying such trial ; and it shall be competent to the nizamat adawlut to order a further trial of the remaining charge or charges against the prisoner, in all cases wherein that court may judge it proper so to direct."

As soon as possible after the close of any trial referrible to the nizamat adawlut, and with no further delay than may be necessary to transcribe the proceedings held thereupon, the courts of circuit are required to transmit to the nizamat adawlut a complete and exact counterpart of the original record of all proceedings held, and papers received, relative to such trial ; with an English letter, stating their opinion on the evidence, and on the guilt and innocence of the prisoners. The record to be so transmitted is to be authenticated by the signature of the judge and seal of the law officer before whom the trial may have been held, and is to include the whole of the proceedings held before the court of circuit, with every examination, exhibit, or material paper of whatever denomination, taken by, or delivered to that court ; and the Persian translations of all examinations taken down in any other language than the Persian. The whole of the proceedings and papers received from the magistrate upon the case referred are also to be annexed to, and transmitted with, the proceedings of the court of circuit ; but any variations between the depositions of the witnesses before the magistrates and courts of circuit, are to be carefully noticed on the proceedings of the latter, and any confessions of the prisoners before the magistrates, any inquest taken in cases of homicide, or any other evidence appearing on the proceedings of the magistrates, are to be entered, with the necessary proofs, on the proceedings of the court of circuit.<sup>1</sup> The courts of circuit are further directed, in the

If a prisoner be liable to a sentence of 14 years' imprisonment, the judge may dispense with the trial of any other charges against the same prisoner, provided a conviction of such additional charges would not subject him to a sentence of death or perpetual imprisonment. The judge of circuit to report such instances to the nizamat adawlut, who may direct, that the prisoner be brought to trial on the remaining charges. R. 10, 1799, § 2, re-enacted in the amended provisions in R. 7, 1803, § 11. Rules for guidance of the courts of circuit in transmitting their proceedings upon trials referrible to the nizamat adawlut.

R. 9, 1793, § 36,  
R. 4, 1797, § 13,  
R. 7, 1803, § 27

<sup>1</sup> Several instances having occurred of considerable delay in the transmission of trials referrible to the nizamat adawlut, that court, with a view to the more certain attainment of the object proposed by Regulation 10, 1799, viz. the speedy discharge, or punishment, of the prisoners whose trials are under reference, directed the strict observance of the following instructions, by a circular letter addressed to the courts of circuit, on the 11th September, 1801. The zillah and city magistrates were, at the same time, instructed, on the application of the judge of circuit, to afford, as far as practicable, the assistance of their native officers, in transcribing the proceedings of the court of circuit :—

"The counterpart record of proceedings held before the court of circuit, required by Section 2, Regulation 10, 1799, to be transmitted as soon as possible after the close of any trial referrible to the nizamat adawlut, and with no further delay than may be necessary to transcribe the proceedings held thereupon, is to be invariably transmitted from the station where the trial may have been held, before the judge of circuit proceeds to any other station ; unless from the number of referrible trials, his detention, whilst the record is transcribing, would be such as materially to impede the circuit ; in which case he is to report the same to the nizamat adawlut, with a list of the referrible trials ; and information when the same will be transmitted respectively. To enable the judges of circuit to prepare the counterpart record of trials referrible to the nizamat adawlut, with the least possible delay, the several zillah and city magistrates will be instructed to give the assistance of their native officers in transcribing the original

R. 4, 1797, § 14;  
R. 7, 1803, § 38;  
Power of in-  
structing ma-  
gistrates to ad-  
mit bail in spe-  
cial cases, vest-  
ed in courts of  
circuit, by Sec-  
tion 9, R. 9,  
1807.

Further provi-  
sions in R. 14,  
1810, § 7, for  
holding to bail  
prisoners,  
whose trials  
are referrible  
to the nizamat  
adawlut, in  
certain cases.  
Rule to be ob-  
served when  
the prisoner  
may not be  
able to find  
bail.

R. 36, 1795, § 6.  
Report to be  
made to the  
nizamat adaw-  
lut, before the com-  
mence-  
ment of each  
circuit, of any  
trials referred  
on the preced-  
ing circuit, upon  
which the or-  
ders have not  
been received.  
R. 4, 1797, § 12,  
re-enacted for  
ceded provin-  
ces, in R. 7,  
1803, § 37.  
Report to be  
made to the ni-  
zamat adaw-  
lut, at the close  
of each circuit.  
Also of com-  
mencement  
and conclusion  
of the business  
at each station.

transmission of trials to the nizamat adawlut, to give a preference, as far as practicable, to those trials in which the prisoner, or prisoners, may be liable to a sentence of death. And the proceedings in such cases are to be transmitted within ten days after the trial is completed. They are also directed, in the transmission of their proceedings to the nizamat adawlut, to be guided by such forms and instructions as they may receive from that court. By the second clause of Section 9, Regulation 9, 1807, the courts of circuit are empowered to instruct the zillah and city magistrates to accept sufficient bail, from persons charged with offences not bailable under the general provisions contained in the regulations, whenever they may see special cause for so doing. In Section 7, of Regulation 14, 1810, they are further declared competent "to hold to bail, or to direct the magistrates to admit to bail, any prisoner or prisoners, whose trials may be referrible to the court of nizamat adawlut, in consequence of the judge of circuit not concurring in the *futwá* of the law officer, for the conviction of the prisoner. When the prisoner may not be able to find bail, in such cases, the judge of circuit shall, with the least possible delay, transmit the proceedings held upon the trial, with a letter stating the grounds on which he may not concur in the *futwá* of the law officers, to the court of nizamat adawlut; and the law officers of that court shall deliver their *futwá*, as soon as possible after the receipt of the trial, for the early sentence, or order, of the court.

Previous to the commencement of each circuit, the courts of circuit are to examine the lists of trials held on the preceding circuit, and referred to the nizamat adawlut, and in the event of their not having received the sentence or orders of the nizamat adawlut, are to report the same to that court; that in the event of the proceedings transmitted, or of the sentence or orders passed thereupon, having miscarried, duplicates may be sent, without delay. On their return from each circuit, the judges are to transmit to the nizamat adawlut a report, containing such observations as they have made during the circuit, regarding the effect of the present system for administering the criminal laws, in the prevention and punishment of crimes; as well as respecting the state of the jails; the treatment and employment of the prisoners; and such other matters as they shall think deserving the notice of the court. But any new regulations which the judges of circuit may deem advisable, are to be prepared in the manner and form prescribed by Regulations 20, 1793, and 9, 1803. With a view to the regular information of the nizamat adawlut upon the progress made in the half yearly circuits, the judges were further required by a circular order from the nizamat adawlut,

proceedings; and the judges of circuit are authorized to employ any additional mohorirs they may find necessary, and be able to procure, for the same purpose, transmitting a contingent bill on this account for the sanction of Government. The proceedings and papers received from the magistrates, required by the regulation above-mentioned to be transmitted to the nizamat adawlut, with trials referrible to that court, are to be transmitted as received from the magistrates; without making copies of them; and such papers, after the nizamat adawlut shall have passed sentence on the trial referred with them, will be returned to the judge of circuit. By these means, the court trust, that the trials referrible to them will be always transmitted, in future, within the period of ten days, fixed by Section 68, Regulation 9, 1793, as well as without any impediment to the business of the circuits." On the 25th January, 1815, a further circular order was issued by the nizamat adawlut, rescinding such part of the instructions above quoted, as dispensed with the transmission of proceedings from the station where the trial is held, in certain cases; and requiring the judge of circuit, in future, "before proceeding to any other station, to transmit from the station at which referrible trials may be held, the records of such trials, with the least possible delay, as prescribed in the regulations."

dated the 8th October, 1806, "to report to that court the dates on which they may commence and conclude the business at each station."'

The judges of circuit are to visit the jails at each station, where the half yearly jail deliveries are held, and once in every three months, or oftener if they think proper, at the stations where monthly jail deliveries are held; and are to issue to the magistrates such orders as may appear advisable for the better treatment and accommodation of the prisoners. The report to be made by them to the nizamut adawlut in cases of neglect of duty, disobedience of orders, or misconduct on the part of the magistrates, has been already noticed. By Section 17, Regulation 9, 1793, (re-enacted for the ceded provinces by Section 17, Regulation 6, 1803,) the courts of circuit were further required to report to the nizamut adawlut any instances wherein, upon the examination of the proceedings held by the magistrate, any persons should appear to have been released or punished by him on insufficient grounds. In explanation of this rule, it was declared by Section 5, Regulation 9, 1801, (re-enacted for the ceded provinces in the fifth clause of Section 2, Regulation 3, 1804,) that the judges of circuit "are expected to examine with attention the proceedings of the magistrate in any case wherein a petition of complaint may be preferred to them at the jail delivery next ensuing after the magistrate's decision upon the case; and to make the report directed by the above section to the court of nizamut adawlut, if the circumstances of the case shall appear to require it; or, if otherwise, to inform the party complaining by a written order upon his petition."<sup>2</sup> But, to save the necessity of frequent references to the nizamut adawlut in such cases, the judge of circuit is authorized by Section 22, Regulation 9, 1807, in modification of the former rule above cited, whenever any case determined by a magistrate or his assistant, "may appear not to have been sufficiently investigated; and a further inquiry may be practicable, and requisite for the ends of justice;" to direct such additional inquiry to be made by the magistrate, and the result to be communicated to the judges of the court of circuit, collectively, for their orders on the case; instead of reporting it in the first instance to the court of nizamut adawlut." By Section 23, of the same regulation, "two or more judges of a court of circuit, forming a court at the sudder station,

R. 9, 1793, § 62;  
R. 16, 1795, § 24;  
and R. 7, 1803,  
§ 32.

Judges of circuit to visit the jails at each station, and issue such orders as may appear advisable.

R. 9, 1793, § 63;  
and R. 7, 1803,  
§ 30.

Report to be made to the nizamut adawlut, in cases of neglect of duty, disobedience of orders, or other misconduct.

R. 9, 1793, § 17;  
and R. 6, 1803,  
§ 17.

Further rule, when persons sentenced by the magistrate may appear to have been discharged, or punished, on insufficient grounds.

R. 9, 1801, § 2;  
and R. 3, 1804,  
§ 2.

Explanation of the above rule.  
R. 9, 1807, § 22;  
modified.

R. 9, 1807, § 24.  
General authority of two or

<sup>1</sup> Numerous other circular orders have been issued by the nizamut adawlut to the courts of circuit; which are detailed in the printed compilation before referred to; under the head, *Proceedings and Records of Courts of Circuit, and Magistrates; including the trial and confessions of prisoners.*

<sup>2</sup> Section 17, Regulation 9, 1793, having been construed to mean that the judge on circuit is to examine and carry away the whole of the proceedings of the magistrates, in cases determined by them, and submitted to the judge of circuit, the nizamut adawlut informed the courts of circuit by a circular letter dated the 22d May, 1804, that "it is not meant by the above section (explained by Section 5, Regulation 9, 1801) that the judge on circuit should examine and carry away the whole of the proceedings of the magistrates; but that an examination of them is only requisite in cases wherein applications may be made to the judge on circuit, or wherein it may appear to him necessary for any purpose of justice. In such cases the court are of opinion that the judge ought to inspect the proceedings, and pass such orders as appear proper, or make the prescribed reference, at the station where the application may be made, provided it can be done without materially protracting the business of the circuit. But when the requisite examination of the proceedings of the magistrates in these cases would be productive of considerable detention of the circuit judge, the court are of opinion that there would be no objection to his taking the proceedings with him to the next station on the circuit; or to his keeping them for examination until his return to the sudder station; instructing the party applying for such examination, by a written order on his petition, to attend him accordingly, for the purpose of receiving a copy of any orders which may be passed by him."

more judges of a court of circuit, to call for and control proceedings of a zillah or city magistrate, or his assistant.

R. 6, 1818, § 2. Calendar of persons in confinement under examination on criminal charges, to be submitted to the judge of circuit at the commencement of each jail delivery. The judges of circuit how to proceed after an inspection of the calendar.

Due attention to be given to the reasons assigned by the magistrate, for not passing a final order in the cases of such prisoners.

R. 12, 1818, § 6. Separate calendar of persons sentenced by magistrates to a longer period of imprisonment than six months, to be laid before the court of circuit at each session.

Courts of circuit and nizamat adawlut empowered to revise such sentences. Further provisions in R. 1, 1820, § 3. Monthly statement of such sentences to be submitted to court of circuit at the sudder station. Who may call for proceedings, in any case, and pass

are declared competent, on all occasions, when it may appear necessary, upon petitions presented to them, relative to the proceedings of any zillah or city magistrate, or of an assistant to a magistrate, within their jurisdiction, to call upon the magistrate for his proceedings, or those of his assistant, on the case; and to pass such orders thereupon as they may deem proper and consistent with the regulations."

It has been already noticed, under the preceding head of the present section, that the magistrates are required by Section 2, of Regulation 6, 1818, to lay before the judges of circuit at the commencement of each jail delivery, a calendar of persons in confinement on criminal charges, still under examination; containing the name of each prisoner; the date of his apprehension; the charge against him; by whom preferred; and what proceedings have been held in the case; with an explanation of the cause of delay in passing a final order, if the prisoner have been more than a month in confinement. It is further provided, in the same section, that the judge of circuit, on inspection of this calendar, will call for the magistrate's proceedings in any case that may appear to require it; and if on perusal of them, he shall be of opinion that there is not sufficient reason for postponing the trial, he is empowered to instruct the magistrate to close his proceedings; and either to pass a final order, if the case be determinable by the magistrate; or to bring it before the court of circuit in a supplementary calendar, if there appear to be sufficient grounds for committing the prisoner to stand his trial before that court. *Second.* In exercising the power vested in the judges of circuit by the above clause, for the purpose of preventing the long confinement of prisoners charged with criminal offences during the magistrate's investigation of such charges, without strong and sufficient cause for their detention, the judges of circuit are required to give due attention to the reasons assigned by the magistrates, for not passing a final order respecting the prisoner, or prisoners in each instance, and to be careful that their instructions to the magistrates, in such cases, are consistent with the objects of public justice, as well as with a just and humane consideration of the prisoner's actual condition, and the period of his confinement."

In the first clause of Section 6, Regulation 12, 1818, "for extending the powers of the magistrates and joint magistrates, in the trial of persons charged with breaking into houses and other places of habitation, as into warehouses or other places used for the custody of property, with an intent to steal; or charged with theft; with buying or receiving stolen property, knowing the same to have been stolen; or charged with escape from jail, or other place of confinement;" the provisions of which have been stated, under the head of *Magistrates and their Assistants*; it is directed that "in addition to the calendars of persons apprehended, and discharged or punished, which the magistrates are required to submit to the court of circuit at the period of the sessions, it shall be the duty of the magistrates to furnish a separate list of all persons who may have been sentenced by them, under the provisions of this regulation, to a longer period of imprisonment than six months; showing the names of the prisoners, the crimes with which they may have been charged, and the sentences passed upon them; and it is hereby declared that the powers vested in the courts of circuit, and in the nizamat adawlut, with regard to the revision of sentences and orders passed by the magistrates, shall be considered applicable to all sentences and orders passed by the magistrates under this regulation." It is further provided, in Section 3, Regulation 4, 1820, that *Monthly Statements* of the sentences passed by the magistrates, under Regulation 12, 1818, "shall be submitted to the court of circuit, at the sudder station, in such form and manner as the nizamat adawlut may direct." Also "that the court of circuit, at the sudder station, shall be con-

sidered competent to call for the proceedings in such cases, where they may see cause, under the general provisions of Section 23, Regulation 9, 1807, without a petition being presented to that effect; and to pass such orders thereon, as they may deem proper, and consistent with the regulations, two or more judges being present, if the sentence of the magistrate's court be reversed, or altered."

The general powers vested in two or more judges of a court of circuit at the sudder station, by Section 23, Regulation 9, 1807, whereby they are authorized, on all occasions when it may appear necessary, upon petitions presented to them, to call for the proceedings of a magistrate, and to pass such orders thereupon as they may deem proper and consistent with the regulations, are declared in Section 3, of Regulation 6, 1818, (Clauses Second, Third, and Fourth,) subject to the following limitation. *Second.* When a person charged with a criminal offence may have been committed, or held to bail, by a zillah or city magistrate, or by any public officer authorized to officiate as a magistrate, to stand his trial before a court of circuit, at the ensuing session of jail delivery, it shall not be competent to the judges of the court of circuit, at the sudder station of the division, to annul the magistrate's order, and to prevent the regular trial of the person so committed or held to bail. *Third.* In such cases, however, two or more judges of the court of circuit, at the sudder station, may, of course, exercise the power declared to be vested in those courts by the second clause of Section 9, Regulation 9, 1807, viz. by instructing the magistrate to admit to bail any persons whom he may have committed to close confinement, until they can be brought to trial at the next session of jail delivery, if the offence charged shall appear to be of a bailable nature, or though not within the description of offences declared bailable by the regulations, if the court of circuit shall be of opinion that there is special reason for admitting the prisoner to bail, and sufficient bail be tendered by him, for his appearance to stand his trial at the next session of jail delivery. *Fourth.* Two or more judges of the court of circuit, at the sudder station, are further hereby empowered to comply in the first instance with applications made to them, by parties held to bail for trial at the sessions of jail delivery, to be allowed to attend and plead upon the trial by a vakeel duly constituted, instead of attending in person, when strong and sufficient reason may be stated for dispensing with the personal attendance of the party in such cases: provided that the judge of circuit, before whom the trial may be subsequently held, shall exercise a full discretion, notwithstanding any previous orders of the court of circuit, in requiring the personal attendance of the defendant, whenever, on consultation with his law officer, it may appear requisite, under the provisions of the Mohummudan law, or generally for the ends of justice."

Under the rules which have been stated for holding the jail deliveries of the several zillahs and cities before a single judge of the court of circuit, and a law officer of that court, the judges holding such jail deliveries, in the trial of prisoners committed or held to bail by the magistrate to be tried before the courts of circuit, as prescribed by the regulations, possess, in conjunction with their law officers, the full powers which are vested in the courts of circuit for the trial and punishment of criminal offences. But the powers of single judges of the courts of circuit at the sudder stations not having been defined, the following provisions in Regulation 25, 1814, were enacted for this purpose. § 12. "First. Whenever, from the absence, or indisposi-

orders thereon: two judges being present, if the magistrate's sentence be reversed, or altered.

R. 6, 1818, § 3, c. 1.

Limitation of the powers vested in the judges of circuit at the sudder stations under Section 23, R. 9, 1807.

Clause 2. The judges of the court of circuit at the sudder station, not competent to annul commitments made by the magistrates.

Clause 3. But may instruct the magistrate to admit to bail any persons whose cases appear to be of a bailable nature, or otherwise for special reasons.

Clause 4.

And may comply in the first instance with applications from parties held to bail, to plead upon the trial by a vakeel instead of attendance in person.

Proviso

R. 25, 1814.

§ 11. Powers of single judges of the courts of circuit, holding jail deliveries, under the rules stated.

Section 12.

In what cases a single judge

\* It having been doubted whether a judge of circuit, holding a zillah or city jail delivery could, upon misconduct appearing before him, in the course of a criminal trial or otherwise, order the dismissal of a police officer, or other native officer, it is

may hold the sitting of a court of circuit at the sudder station.

And what duties may be performed by him subject to the following provisions.

Not to reverse or alter the decision or order, of a magistrate or a joint or assistant magistrate without the concurrence of another judge. Not to reverse or alter a former decision or order of one or more judges of a court of circuit. Not to take cognizance of appeals against decisions or orders passed by himself. Rule to be observed on references from a judge of circuit holding a jail delivery when a single judge at the sudder station may concur with or differ from the judge making the reference. Rule in Section 10, of this regulation, applicable to single judges of courts of circuit, respecting appointment and removal of ministerial native officers.

tion, of one or more of the judges of a court of circuit, or from one or more of the judges being occupied with the business of the civil court, or from vacancies, or any other cause, the sitting of a court of circuit, at the sudder station, cannot be held before two judges, it shall be competent to a single judge to hold the sitting of the court; to call for the proceedings of a zillah or city magistrate, a joint magistrate, or an assistant magistrate, in cases, in which there may appear to be sufficient cause for requiring such proceedings; to execute all sentences and orders received from the court of nizamat adawlut; and to pass orders in conformity with the regulations on all matters, cognizable by the courts of circuit at the sudder station, subject to the following provisions. *Second.* In all cases wherein a decision, or order, may have been passed by a zillah or city magistrate, or by a joint or assistant magistrate, it shall not be competent to a single judge of a court of circuit, sitting at the sudder station, to reverse, or alter such decision, or order, without the concurrence of another judge of the court of circuit. *Third.* In cases in which a decision or order may have been already passed by one or more judges of a court of circuit, it shall not be competent to a single judge to reverse, or alter the decision or order so passed. *Fourth.* No judge of circuit shall take cognizance of appeals to the court of circuit against decisions, or orders, passed by himself in the capacity of magistrate, joint magistrate, or assistant magistrate; or in any other capacity. *Fifth.* In cases referred to the court of circuit, at the sudder station, by the judge of circuit holding a jail delivery, in pursuance of Section 22, Regulation 9, 1807, or any other regulation directing or authorizing a reference to the court of circuit at the sudder station, by the judge of circuit employed upon the duties of the zillah and city jail deliveries, if there be only one judge at the sudder station, or if the case shall come before a single judge, under the provision made by Clause First, of this section, and such judge shall concur in opinion with the judge making the reference, he shall be competent to pass a final order in conformity with their joint opinion and the regulations. But if the judge at the sudder station should differ in opinion from the judge making the reference in such cases, he shall record his opinion, and the question shall lie over until the opinion of a third judge can be obtained. *Sixth.* The rule contained in Section 10, of this regulation, with respect to the appointment and removal of the ministerial native officers, of the provincial courts of appeal, and of the zillah and city civil courts, shall be considered applicable to, and observed by, single judges of the courts of circuit, holding the sittings of those courts at the sudder stations under the present section, with respect to the appointment and removal of ministerial native officers of the courts of circuit; or of the

declared, in Section 15, Regulation 25, 1814, "that a judge of circuit, holding a zillah or city jail delivery, may order the dismissal of any native officer convicted before him of a criminal offence, which, under any express provision in the regulations, is punishable by dismissal from office; and on the same being notified to the magistrate, or other European public officer, under whom the native officer, so dismissed, may have been employed, it shall be the duty of the magistrate, or other European officer, to take measures for the appointment of a successor to the vacant office, in conformity with the regulations. In all other cases, if the removal of a native officer appear necessary to a judge of circuit, holding a jail delivery, he shall communicate the same, with the grounds of his opinion, to the magistrate, or other European public officer, under whom such native officer may be employed; and the magistrate, or other European officer, receiving such communication, shall either conform thereto, and proceed to fill the vacant office, in the mode prescribed by the regulations; or shall report the case to the proper court, board, or other authority, vested with the final power of removing the native officer referred to, under the provisions of Regulation 8, 1809, or any other regulation in force."

zillah and city magistrates, joint magistrates, or assistant magistrates, or native officers of the police, in cases, in which the appointment or removal of such officers is subject to the confirmation of the courts of circuit. § 13. "Decisions and orders of a single judge of a court of circuit, holding a sitting of the court at the sudder station, in pursuance of Clause First, of the preceding section, shall, if passed in conformity with the several provisions of that section, and the general regulations, have the same force and effect, as if they had been passed by the court of circuit collectively." § 14. "In all cases of a difference of opinion between two or more judges of a court of circuit, they shall be guided by the principles of the rules prescribed for the provincial courts of appeal in Section 9, of this Regulation."

In concluding what relates to the powers and duties of the courts of circuit, it appears unnecessary to offer any remark upon their utility and importance; both as providing for the regular and impartial administration of criminal justice, by experienced judges, who can have no bias against the prisoners brought to their tribunal; and as superintending and controlling the conduct of the local magistrates within their respective divisions. But it may be proper to insert in this place the following circular letter to the magistrates, from the secretary to Government in the judicial department, dated the 11th April, 1805; and to notice that accommodation for the judges of circuit has since been provided at many of the zillah stations.

"It having been represented to His Excellency the Most Noble the Governor General in Council, that the judges of circuit have, in some instances, been exposed to inconvenience, from want of personal accommodation, during their residence at the different stations for the jail delivery; and His Excellency in Council being of opinion, on a consideration of the nature of the duties of the judges of circuit, that the necessary accommodations should be provided for them during the sessions; I am directed to desire that you will report whether there are any public buildings which can be appropriated to the abovementioned purpose; and if not, that you will state in what manner you would recommend that the necessary accommodation should be provided for the judges of circuit with the least expense which may be practicable to Government. I am further directed to acquaint you that the Governor General in Council desires that every personal attention, and respect, may be shown to the judges of circuit, by yourself and the officers subject to your authority, during their residence at your station, and on their progress through your jurisdiction."

Section 13.  
Decisions and orders of a single judge of a court of circuit passed in conformity with the preceding section, to have the same force as if passed by the court collectively.

Section 14.  
By what rules courts of circuit to be guided in cases of a difference of opinion.  
Concluding remark on utility and importance of courts of circuit.

Circular letter to the magistrates respecting them, written by the secretary to Government, on the 11th April, 1805.

### *Court of Nizamut Adawlut.*

The court of nizamut adawlut, or superior criminal court, is held at Calcutta; and was constituted, by Section 67, Regulation 9, 1793, to consist of the Governor General and members of the supreme council, assisted by the head cauzee and two moofities. But for the reasons before stated, relative to an alteration in the constitution of the sudder dewanny adawlut,<sup>a</sup> it was enacted by Section 10, Regulation 2, 1801, that "the court of nizamut adawlut shall henceforth consist of three judges, to be denominated respectively, chief judge, and second and third judge, of the nizamut adawlut, assisted by the head cauzee of Bengal, Behar, Orissa, and Benares, and by two moofities. The said chief judge shall not be the Governor General, nor the

R. 9, 1793, § 66, 67.  
Court of nizamut adawlut where held and how constituted



Number of judges now composing the court, under Section 2.

R. 2, 1801, § 11; re-enacted for ceded provinces in R. 8, 1803, § 3. Oath to be taken by the judges of the nizamat adawlut R. 9, 1793, § 70, 71, R. 8, 1803, § 7, 8. And by the register. Solemn declaration prescribed for law officers by R. 18, 1817. The nizamat adawlut to be an open court, and by what rules of proceeding to be guided.

Commander in Chief, but shall be one of the members of the supreme council, to be selected and appointed by the Governor General in Council; and the said second and third judges shall be selected and appointed by the Governor General in Council, from among the covenant civil servants of the Company, not being members of the supreme council." The subsequent alterations in the constitution of this court, and of the court of sudder dewanny adawlut, made by Regulations 10, 1805, 15, 1807, and 12, 1811, have been detailed in treating of the latter court.<sup>1</sup> It will be sufficient to repeat, in this place, that under the provision contained in Section 2, of Regulation 12, 1811, for "a chief judge, and as many puisne judges, as the Governor General in Council may, from time to time, deem necessary," the court now consists of a chief judge, and three puisne judges, all chosen from among the covenanted servants of the Company; but neither of them being a member of the supreme council.

The chief judge, and each of the puisne judges of the nizamat adawlut, are required to take and subscribe before the Governor General in Council an oath, similar to that which is directed to be taken by the judges of the courts of circuit. The register and law officers of the nizamat adawlut are also required to take and subscribe the same oaths, or solemn declarations, as are directed to be taken by the registers and law officers of the courts of circuit.<sup>2</sup> It is provided by Section 13, Regulation 2, 1801, (re-enacted for the ceded provinces by Section 5, Regulation 8, 1803) that the nizamat adawlut be an open court; and that it be held, under the same provisions as are prescribed for the court of sudder dewanny adawlut, with respect to the number of judges necessary for holding a court; to an eventual difference of opinion between the judges; to the ordinary and special sittings of the court; to its mode and order of proceeding; and to the execution of its process.<sup>3</sup> But in consequence of the number of trials made referrible to the

<sup>1</sup> Pages 132 to 134.

<sup>2</sup> Vide form of solemn declaration prescribed for law officers in note to page 167.

<sup>3</sup> See the provisions referred to, under the head of *Court of Sudder Dewanny Adawlut*. To these however should have been added Section 18, of Regulation 25, 1814, as follows:—"It is already provided by the regulations, with respect to the court of sudder dewanny and nizamat adawlut, that in the event of any difference of opinion when three judges may be present, the voices of the majority shall determine the question; or if only two judges be present, that the decision upon the question be postponed for the attendance of a third judge. It is hereby further provided, that if four judges of the court of sudder dewanny adawlut, or the court of nizamat adawlut, be present at a sitting of either court, when a difference of opinion may take place, and the number of voices be equal, the chief judge, concurring with any one of the other judges, shall possess a casting vote, and the question shall be determined accordingly.

It should also have been noticed, in stating the provisions of Sections 6 and 8, Regulation 13, 1810, respecting sittings of the sudder dewanny adawlut before single judges (page 138), that those provisions were modified by Section 16, Regulation 25, 1814, in the same manner, and to the same extent, as the provisions of Section 2, Regulation 13, 1810, respecting sittings of the provincial courts, before single judges, were modified by Sections 6 and 8, of Regulation 25, 1814; detailed, under the head of those courts, in page 114. Under these modifications, whenever, from the number of original causes and appeals, depending before the sudder dewanny adawlut, it may appear requisite for the speedy trial and decision of such causes and appeals, or for the general dispatch of business depending before the court, that separate sittings of the court should be held, at the same time, before one or more judges respectively; and the number of judges present may admit of such separate sittings being held; it is competent to the judges to hold the same; and to pass orders, or judgments, in conformity with the regulations, subject to the same restrictions; when the sittings may be held before a single judge, as are prescribed by the rules in force, with respect to

nizamut adawlut, by Regulation 8, 1808, (under the provisions of which all persons convicted of robbery by open violence, who may not be liable to suffer death, are subject to imprisonment and transportation for life) the following modifications of the rules before in force were enacted by that regulation."

§ 5. "Such part of the existing regulations as directs that two judges of the court of nizamut adawlut shall be necessary to hold a court, and that no sentence or final order of the court shall be valid unless passed by two judges present, is hereby rescinded." § 6. "The sittings of the court of nizamut adawlut shall be held before two or more judges, as heretofore, whenever the number of trials and other business depending before the court may admit of it. But whenever the number of depending trials may render it necessary, for their speedy determination, that the judges should hold separate sittings, it shall be competent to any one judge to hold a sitting of the court, and to pass orders or sentence upon any trial under reference to it, in conformity with the regulations; provided, that if the single judge so sitting shall not concur with the judge of circuit, before whom the trial may have been held, with respect to the conviction of the prisoner, he shall not pass sentence, until one or more of the other judges of the court of nizamut adawlut can sit with him upon the trial."

§ 7. "The Mohummudan law officers of the court of nizamut adawlut shall continue to deliver their joint *futwá* upon the trials referred to that court, as far as may be practicable. But whenever, from the number of trials in reference, it may be requisite for their speedy decision, that they should be divided amongst the law officers for revision, it shall be competent to any one of the law officers to deliver a *futwá* thereupon. Provided that if any one of the law officers of the nizamut adawlut, on re-

Modifications of former rules enacted by R. 8, 1808.

Section 5. Restriction, that two judges be necessary to hold a court, rescinded.

Section 6. In what cases one judge of the nizamut adawlut may hold a sitting of the court

And what powers may be exercised by the judge so sitting.

Section 7. In what cases, and under what restrictions, a single law officer of the nizamut adawlut may deliver the *futwá*.

single judges of the sudder dewanny adawlut, holding sittings of that court, under the provisions of Regulation 13, 1810. It is further provided by the modified rule contained in Section 8, Regulation 25, 1814, and extended to the sudder dewanny adawlut by Section 16, of that regulation, that when a single judge of the latter court, trying a case in appeal, shall be of opinion that the decision appealed from ought to be reversed or altered, and shall record his sentiments to that effect; and another judge of the court, sitting afterwards upon the same appeal, shall concur in the opinion so recorded; it shall be competent to the second judge to pass the decree, or final order, in conformity thereto; and to cause the same to be carried into execution, in the mode prescribed by the regulations, without waiting for the sitting of both judges, when circumstances may not conveniently admit of it. In such cases, the decree, or order, is to be signed by the judge present at the final sitting; and the signature of the judge who first sat is not considered requisite: but his opinion, as recorded by him, is to be recited in the decree, or final order, and in the copies of it delivered to the parties. This note is meant to supply an inadvertent omission in the second section of the first part of this Analysis; and will be connected with it by a reference in the index to the present volume.

<sup>1</sup> The rule here cited was extended by Section 17, Regulation 25, 1814, as follows: "The rule for separate sittings before single judges of the court of nizamut adawlut contained in Section 6, Regulation 8, 1808; though principally intended for the speedy determination of criminal trials, under reference to that court, is hereby declared to authorize a sitting of the court, before a single judge (when two or more judges may not be able to attend) upon miscellaneous references to or from the courts of circuit and magistrates, upon petitions receivable by the court of nizamut adawlut; and generally upon all matters appertaining to the cognizance of that court under the regulations in force. But in every case wherein a single judge of the nizamut adawlut may be of opinion that the decision or order of a court of circuit, magistrate, or other public officer, should be reversed, or altered, he is not to pass a final order, without the concurrence of one or more of the other judges of the court. Nor is he, in any case, by his single authority, to reverse or alter a former decision, or order, of one or more of the judges of the court."

Additional rules enacted in R. 17, 1817. Section 17. Extension of provision in R. 7, 1808, § 7, to all cases in which a judge of circuit, before whom a trial may be held, shall recommend a mitigation of punishment, upon grounds which a single judge of the nizamat adawlut, holding a sitting of that court, may deem insufficient. Opinion of a second judge of the nizamat adawlut to be taken in such cases. Section 18. A single judge of the nizamat adawlut, concurring with the judge of circuit before whom the trial may have been held, may grant a mitigation of punishment, in like manner as two judges of the nizamat adawlut are empowered by R. 14, 1810, § 3. A similar power may be exercised by a single judge of the nizamat adawlut, sitting on a criminal trial, although a mitigation or remission of punishment be not proposed by the judge of circuit referring the trial.

vising the proceedings held upon the trial, shall not concur with the law officer of the court of circuit before whom the trial may have been held, as to the conviction of the prisoner, he shall not write the *fulwá*, until one or more of the other law officers of the nizamat adawlut can deliver the same in concert with him, after perusal of the proceedings.”<sup>2</sup>

The following additional rules were enacted in Sections 17, and 18, of Regulation 17, 1817:—§ 17. “It is provided in Section 6, Regulation 7, 1808, that if a single judge of the nizamat adawlut, holding a sitting of that court upon a criminal trial, shall not concur with the judge of circuit before whom the trial may have been held, with respect to the conviction of the prisoner, he shall not pass sentence until one or more of the other judges of the court can sit with him upon the trial. This provision, which includes all instances of a difference of opinion upon the guilt or innocence of a prisoner, is now extended to all cases in which the judge of circuit, before whom the trial shall have been held, may recommend a mitigation of punishment, upon grounds which a single judge of the nizamat adawlut, holding the sitting of that court, may deem insufficient. In such cases, the opinion of a second judge of the nizamat adawlut shall be taken upon the mitigation proposed by the judge of circuit; and in giving such opinion he will examine the proceedings upon the trial as far as may be necessary to enable him to form a judgment upon the stated grounds of mitigation.” § 18. “*First.* When the judge of a court of circuit, referring a criminal trial to the nizamat adawlut, shall state circumstances of extenuation, or other special grounds for a mitigation of punishment, in behalf of any prisoner, or prisoners, and a single judge of the nizamat adawlut, holding the sitting of that court, shall concur in the mitigation of punishment recommended by the judge of circuit, it shall be competent to the judge, so concurring, to grant the proposed mitigation, and to pass sentence accordingly; in like manner as two judges of the nizamat adawlut are declared competent to grant a mitigation, or remission of punishment, whenever it may appear just and proper, under the provisions contained in Section 3, Regulation 14, 1810. *Second.* A single judge of the nizamat adawlut, holding the sitting of that court on a criminal trial, under Section 6, Regulation 8, 1808, is further declared competent to mitigate or remit any part of the prescribed punishment, if it appear to him just and proper on the grounds stated in Section 3, Regulation 14, 1810, although a mitigation or remission may not be proposed by the judge of circuit referring the trial; but in such cases the grounds on which a mitigation or remission of punishment may be granted shall be recorded and communicated to the court of circuit, for the information of the prisoner, or prisoners, as required by the abovementioned section of Regulation 14, 1810.”

The provisions of Regulation 14, 1810, which are here referred to, and which were enacted, (as stated in the preamble to that regulation) partly to remove any doubt of the competency of the nizamat adawlut to remit or mitigate the penalties of the Mohammudan law, in cases of *Hudd* and *Kisás*; but also “to save the necessity of a reference to the Governor General in Coun-

<sup>2</sup> A further provision, in Section 8, of Regulation 8, 1808, which extended to trials before a single judge of the nizamat adawlut, under that regulation, the discretion vested in the judges of that court by the fifth clause of Section 7, Regulation 53, 1803, (to confirm in certain cases a sentence passed by a judge of circuit, in conformity with the *fulwá* of his law officer, without revising the whole of the proceedings held upon the trial) was rescinded by Section 16, Regulation 17, 1817; together with the clause of Regulation 53, 1803, abovementioned; “the provisions contained therein for expediting the decision of criminal trials referred to the nizamat adawlut having seldom been found available for the purpose intended by them.”

cil, in any case, (except the trial of persons charged with crimes against the State) wherein it may appear to the judge of the nizamat adawlut just and proper to grant a remission or mitigation of punishment;" are contained in Sections 2, 3, and 4, of that regulation, to the following effect:—

§ 2. "Regulation 6, 1796; Clause Fifth, Section 13, Regulation 1, 1796; Sections 19, 20, and 21, Regulation 8, 1803; and all other provisions in the existing regulations, (excepting such as relate to persons charged with crimes against the State) which require a reference from the court of nizamat adawlut to the Governor General in Council, for the purpose of obtaining a pardon, or mitigation of punishment, to persons charged with, or convicted of, any criminal offence, are hereby rescinded." § 3. "In all criminal trials before the court of nizamat adawlut (except for crimes against the State, in which cases the proceedings held upon the trial are required by Section 5, Regulation 4, 1799; and Section 5, Regulation 20, 1803; to be submitted, with the sentence of the court, for the orders of Government) if the *futwa* of the law officers of the nizamat adawlut, or the sentence of an assembly of hill chiefs in zillah Boglepore, (held under the provisions of Regulation 1, 1796) shall declare a prisoner, or prisoners, liable to a more severe punishment, than on due consideration of the evidence, and all the circumstances of the case, may appear to the court of nizamat adawlut, to be just; or if a prisoner, or prisoners, (not charged with a crime against the State) shall in any case before the court of nizamat adawlut, under the provisions of the laws and regulations in force, be liable to a more severe punishment, than may appear to the court equitable, though not specifically declared by the *futwa* of the law officers, or sentence of the hill chiefs in zillah Boglepore; it shall be competent to two or more judges of the court of nizamat adawlut, to grant such remission, or mitigation of punishment, as may appear just and proper, according to the evidence and circumstances of the case, and to pass sentence accordingly; provided that in all such cases the court of nizamat adawlut shall record the grounds upon which a remission or mitigation of punishment may be adjudged, under the discretion hereby vested in that court; and shall communicate the same to the court of circuit (or magistrate of zillah Boglepore), before whom the trial may have been held, with directions to cause the same to be made known, in open court, to the prisoner, or prisoners, concerned." § 4. "The powers vested in the nizamat adawlut, by the preceding section, shall be considered applicable to all cases in which that court may revise a sentence passed by a court of circuit, or zillah or city magistrate, or assistant to a magistrate, in pursuance of Section 24, Regulation 9, 1807; or under any other provision in the regulations. It is also declared applicable to any cases in which the court of nizamat adawlut may see reason to revise a sentence passed by that court, and to remit any part of the punishment adjudged. But this discretion shall not be exercised without strong and sufficient grounds, to be recorded at large upon the proceedings of the court." It was at the same time provided in Section 6, of Regulation 14, 1810, that "nothing contained in this, or any other regulation, shall be understood to preclude the Governor General in Council from the exercise of the power reserved to the chief executive authority in all cases when it may appear proper, to pardon any person charged with, or convicted of, a criminal offence. In all such cases, a letter from the secretary to the Government in the judicial department, addressed to the register of the nizamat adawlut, or to any zillah or city magistrate, or to any other local authority, shall be deemed a sufficient voucher of the pardon thereby notified, and shall be observed accordingly."

Section 2.  
Provisions in  
existing regulations  
rescinded.

Section 3.  
In what cases  
the court of  
nizamat adaw-  
lut may grant  
a remission, or  
mitigation of  
punishment, in  
trials before  
that court.

Grounds of re-  
mission, or mi-  
tigation, to be  
recorded in  
such cases.  
And to be  
communicated  
for notification  
to the prison-  
ers in open  
court.

Section 4.  
Preceding sec-  
tion declared  
applicable to  
revised sen-  
tences of the  
courts of cir-  
cuit, magis-  
trates, or as-  
sistants to the  
magistrates.  
Also to cases  
in which the  
nizamat adaw-  
lut may revise  
a sentence pass-  
ed by that  
court.

Section 6.  
Powers re-  
served to the  
Governor Ge-  
neral in Coun-  
cil, to pardon  
any person  
charged with,  
or convicted  
of, a criminal  
offence.

R. 9, 1793, & 72.  
Nizamat  
adawlut has

The court of nizamat adawlut is authorized to take cognizance of all matters relating to the administration of justice, in criminal cases, and to

Recognition of all matters relating to criminal justice, and police. R. 9, 1793, § 73.

May exercise powers vested in late Naib Nazim.

R. 2, 1801, § 12. Under restrictions in the regulations.

R. 9, 1793, § 74, R. 8, 1803, § 9.

By what law the sentences of the court to be regulated.

And in what cases such sentences are final. R. 9, 1793, § 77.

R. 8, 1803, § 12. Rule for obtaining *futwá* of the law officers of the nizamat adawlut; and general mode of proceeding to be observed upon trials referred to that court.

the police of the country;” and is directed to submit to the Governor General in Council such regulations regarding them as it may deem advisable. It may exercise the general powers which were vested in the nizamat court when held at Moorshedabad, and superintended by the late Naib Nazim the Newab Mohammud Ruza Khan. But its authority in particular cases is defined by the regulations; and it is prescribed that “the sentences of the court shall be regulated by the Mohammudan law, excepting cases in which a deviation from it may be expressly directed by any regulation, passed by the Governor General in Council.” The modifications of the Mohammudan law enacted by the regulations have been stated in the preceding section. The cases referrible to the nizamat adawlut by the magistrates, and courts of circuit, have also been noticed; and it will be sufficient to add that in cases of life and death, as well as in all cases of corporal punishment, fine, and imprisonment, the sentences of the nizamat adawlut are final.

The law officers of the nizamat adawlut are ordered to assemble at the office of the register three times in every week, or oftener if necessary. The register is to lay before them the Persian copies of proceedings upon trials referred by the courts of circuit to the nizamat adawlut; after duly considering which, and previously to leaving the register’s office, they are to state in writing, at the foot of the record upon each trial, whether the *futwá* of the law officer of the court of circuit is consistent with the evidence, and conformable to the Mohammudan law; or the *futwá* which, in their opinion, ought to be delivered upon the case; <sup>2</sup> and are to subscribe their names, and affix their seals thereto. The register is to submit the proceedings so revised to the judges of the nizamat adawlut at their next meeting; <sup>3</sup> and the court,

<sup>1</sup> A more direct supervision of the police is exercised by the Governor General in Council, with whom the superintendents of the police, and the zillah and city magistrates, correspond, on breaches of the peace, police arrangements and establishments, and other subjects of police, through the secretary to Government in the judicial department. In a letter from that officer to the register of the nizamat adawlut, dated 14th May, 1807, the power reserved to the executive Government, in matters connected with the general peace of the country, was declared in the following terms:—“The Governor General in Council considers it essential that the powers exercised by the executive Government, in the conservation of the general peace of the country, should be kept entirely distinct from the powers and duties vested in the nizamat adawlut, as a court of criminal judicature; and that the Government should receive direct and immediate information of any occurrences requiring its aid and interposition.”

<sup>2</sup> Under the option left to the law officers of the nizamat adawlut, it has been their invariable practice to deliver a general *futwá* upon the case; without any direct reference to the *futwás* given by the law officers of the courts of circuit; though any erroneous reasoning, or conclusion, in the latter, is sometimes indirectly noticed and re-futed.

<sup>3</sup> The increased number of criminal trials referred to the nizamat adawlut, since the jurisdiction of that court was extended to the ceded and conquered provinces, has, for some years past, required a daily sitting; (Sundays only excepted;) and frequently separate sittings, at the same time, before two or more judges of the court. An arrangement made, with the sanction of Government, in March, 1816, for expediting the business of the sudder dewanny, and nizamat adawlut, respectively, by a division of it between the judges of the two courts, with their occasional co-operation in cases of difficulty or importance, has been already mentioned, in a note to page 134, with the successful result of this arrangement, in leaving no criminal trial undecided at the commencement of the year 1817. The following is an extract from an official Report made to Government, on this subject, under date the 2d July, 1817. “On the 1st of April, 1816, the number of regular criminal trials depending before the nizamat adawlut amounted to 178; besides 17 miscellaneous cases. This heavy arrear was gradually reduced, between April and December, 1816; and the court had the satisfaction of reporting on the 8th January last, that, at the beginning of the present year not a single criminal trial was depending before the court. Since that period no delay of

after perusing the proceedings of the court of circuit, with the *futwās* of the law officers of that court, and of the nizamat adawlut, are to pass the final sentence; unless further evidence or information upon any point appear requisite; in which case the necessary instructions are issued to the courts of circuit, or magistrates; and the sentence is postponed till a communication shall have been made of the result; when, if further evidence be received, a second *futwā* is taken from the law officers, and the trial is again brought before the court. Within three days after sentence is passed by the court of nizamat adawlut, or sooner if practicable, the register is to transmit a copy of it, under the seal of the court, and attested with his official signature, to the judges of the court of circuit, who are immediately to issue a warrant to the proper magistrate, to cause the sentence to be carried into execution.<sup>1</sup> The magistrate, on receipt of the warrant, is to cause the sentence to be executed, without delay; and to return the warrant to the court of circuit, with an endorsement under his official seal and signature, certifying the manner in which the sentence has been executed.<sup>2</sup> All warrants so returned are

R. 9, 1793, § 7b.  
R. 8, 1803, § 13.  
Sentences of  
the nizamat  
adawlut how  
to be execut  
ed.

importance has occurred in deciding the criminal trials brought under the cognizance of the court, although the number of regular trials referred in the last six months, viz. 256, considerably exceeded the half-yearly average of 1815 and 1816; (which, of regular trials, was 189 only;) and His Excellency the Governor General in Council will observe, from the accompanying statement, that, on the 1st instant, no criminal trial was depending before the nizamat adawlut. The aggregate number of trials decided by the court, during the period of fifteen months, which has elapsed since the 1st April, 1816, is as follows—

Regular trials	-	-	-	697
Miscellaneous cases	-	-	-	50
				— 747 Total.

The above extract is cited in par. 126, of a letter from the court of sudder dewanny adawlut, to the Vice President in Council, dated 9th March, 1818; quoted, by mistake, as dated the 29th March, in page 188; and it was added, in the same paragraph—"The number of civil causes depending before the sudder dewanny adawlut, on the 1st of April, 1816, was 461; and on the 1st instant, 410; being a reduction of 51 civil suits. The actual number of appeals disposed of during the fifteen months, amounts to 196. It may, at the same time, be observed, that there is little arrear now depending in that branch of the business of the court, which is ordinarily denominated *miscellaneous*. In the department of English correspondence, the current business has been conducted, without accumulation, under the arrangement adopted by the court, in their resolutions of the 18th March, 1816; and the most important business depending in the English department, previously to the month of April, 1816, has been since disposed of." The superintendence of this department having principally devolved to the author of this Analysis, in his capacity of chief judge, he may be allowed to conclude the subject of this note by remarking that, on the 7th January, 1819, when the state of his health obliged him to apply for permission to proceed to St. Helena, and eventually to England, he had the satisfaction of reporting, "that, under the arrangement for conducting the business of the sudder dewanny and nizamat adawlut, which was adopted with the sanction of Government, from the month of April, 1816, and which placed under his personal superintendence the duties of the English department, the whole of the arrear of business in that department had been disposed of."

<sup>1</sup> For the fuller information of the magistrates, the courts of circuit were instructed by the nizamat adawlut, on the 13th March, 1804, in all cases of capital punishment, to transmit to the magistrate, with their warrant, a copy of the sentence passed by the nizamat adawlut. It was further resolved, by the nizamat adawlut, and communicated to the court of circuit, on the 5th September, 1811, that for the information of the law officers of the courts of circuit, "an attested copy of the *futwā* of the law officers of the nizamat adawlut shall thereafter accompany the sentences or orders, passed by the nizamat adawlut on all trials decided by them."

Printed forms of warrants, in the English and country languages, are furnished to the magistrates by the register to the nizamat adawlut, and the following instructions

to remain with the court of circuit; excepting warrants for the infliction of capital punishment, which are to be forwarded to the nizamat adawlut.'

were circulated to the magistrates, through the courts of circuit, on the 19th June, 1804. "It is the intention of the nizamat adawlut, that all warrants should be returned to the court by which they are issued, after the complete execution of the sentence contained in them, with an endorsement, certifying the manner in which the sentence has been carried into execution. In the case of a sentence both for corporal punishment and imprisonment, the carrying into execution of the former part of the sentence should be endorsed on the warrant at the time of inflicting the punishment; but as the warrant in this case cannot be considered to be completely executed until the prisoner has undergone the period of imprisonment adjudged against him, the magistrate should retain the warrant until the expiration of the term of imprisonment, or return it duly endorsed should the prisoner die during the course of the term; or, in the event of his being removed to another zillah, the warrant should be transmitted to the magistrate of the zillah to whom the prisoner may be sent, with information that he is to return it duly endorsed to the court of circuit, on the expiration of the sentence, or death of the prisoner." The following orders, for certifying the restoration of stolen property, were also transmitted to the courts of circuit on the 5th May, 1796. "The court of nizamat adawlut, adverting to the orders which frequently form part of their sentences for the restoration of stolen property found on the prisoners convicted; and being of opinion that the execution of such orders should be certified by the zillah and city magistrates, either in the return endorsed by them on the warrant of the court of circuit, or in a subsequent return to be made as soon as the execution of the order may admit; you are accordingly directed to require the magistrates of your division to certify to you, in the manner above stated, the execution of all orders of the foregoing description, and are to be careful that such certificates are preserved among the records of your court."

'In the execution of sentences of the courts of circuit and nizamat adawlut for corporal punishment, by stripes; a thick whip, of one thong, made of corah hide or leather, and thence called a corah, is used. And the following instructions were issued to the magistrates through the courts of circuit, on the 21st and 28th December, 1796. "The court of nizamat adawlut taking into consideration the objections which have arisen to the instruments of punishment introduced since the discontinuance of the corah in November, 1794, and to the use of the military cat as has been proposed; and from all the information which they have been able to obtain on the subject, having no reason to believe that the corah, which has long been the established instrument of corporal punishment in this country, has, in any instance proved fatal, or is likely to be productive of fatal consequence if used with proper precautions, they have directed me to desire that you will instruct the several magistrates within your division to use the corah, which was formerly the established instrument of punishment, in the execution of sentences for corporal punishment, passed by the court of nizamat adawlut, or by your court, under the following precaution:

*1st.* The whipping post to be so constructed as that the prisoner, when tied to it, may be secured from receiving any part of the blow on his breast or other forepart of his body.

*2dly.* The corah-burdar to be positively enjoined to strike the prisoner on the back only; with every possible attention to prevent the blows falling on any other part of the body.

*3dly.* All prisoners to be examined by the surgeon of the station (or in his absence by the native doctor) previously to their being punished; and the punishment to be postponed of any prisoner whom the surgeon (or native doctor) may consider in too infirm a state to receive it, as long as he may judge necessary.

*4thly.* The native doctors, attached to the jails of the several stations, to be present on all occasions when prisoners are punished with the corah; and the punishment to be stopped at any stage of it, if the native doctor should be of opinion, that the infliction of the remaining stripes will endanger the prisoner's life; in which case the remainder of the punishment is to be postponed until the surgeon of the station consider the prisoner capable of sustaining it." On the 25th October, 1797, the magistrates were further directed to use a jacket, introduced by the third judge of the Dacca court of circuit (Mr. Crisp,) made of strong hide, so formed and fitted as to cover and defend from injury the whole of the fore part of the body, and the neck and loins behind;

The court of nizamat adawlut is empowered to authorize occasional deviations from the order of succession, fixed for the half yearly jail deliveries, upon report of any particular circumstances that may occur to render such deviations necessary. It is also competent, with the sanction of the Governor General in Council, to authorize any special deviation, which may appear necessary or expedient, from the rules prescribed for the periods of the several jail deliveries. It is further declared competent "to call for the proceedings of any court of circuit, or of any zillah or city magistrate, or assistant to a magistrate, whenever it may appear requisite; and to pass such orders thereupon as it may deem just and proper."

The court of nizamat adawlut is directed to keep a regular diary of its proceedings. But since the alteration made in the constitution of the court by Regulation 2, 1801, an English translation and record are not required, except as the court may find convenient and conducive to regularity; and as may be necessary in the prescribed cases of reference to the Governor General in Council; when attested copies of the court's proceedings, and translations of any papers in the country languages, are to be furnished.

It remains only to mention, under the present head, that the powers vested in the court of sudder dewanny adawlut, to suspend from office, any judge or judges of the provincial, zillah, or city courts, for disobedience or neglect of any process, rule, or order, of the court of sudder dewanny adawlut, or for a false return thereto; and to suspend any judge of a zillah or city court, in cases of disobedience, neglect, or false return to any process, rule, or order, of a provincial court of appeal, are declared to be equally vested in the court of nizamat adawlut, in similar cases of disobedience, neglect, or false return, to any process, rule, or order, of that court, by the judges of the courts of circuit, or the zillah or city magistrates; as well as in cases of disobedience, neglect, or false return, by a zillah or city magistrate, to any process, rule, or order, of a court of circuit; and in such cases, the courts of circuit are directed to make the same reports to the court of nizamat adawlut, as the provincial courts of appeal are required to make to the sudder dewanny adawlut. The court of nizamat adawlut is further authorized and directed to proceed upon reports from the courts of circuit, of neglect or misconduct, by the zillah or city magistrates, as well as upon reports from the court of circuit, and zillah or city magistrates, of neglect, or misconduct,

R. 3, 1798, § 6.  
R. 2, 1804, § 8.  
R. 1, 1806, § 6.  
Powers vested in nizamat adawlut to authorize occasional deviations in the fixed order and periods of the zillah and city jail deliveries.  
R. 9, 1807, § 21.  
And general power of calling for and controlling the proceedings of any court of circuit, magistrate, or assistant.  
R. 9, 1793, § 68.  
R. 8, 1803, § 6.  
Diary of proceedings to be kept by nizamat adawlut.  
R. 2, 1801, § 16.  
How far an English record, and translation of papers in the country languages, are required.  
R. 2, 1801, § 14.  
R. 8, 1803, § 24.  
Powers vested in court of nizamat adawlut in cases of disobedience, or neglect, or false return to any process, rule, or order by a court of circuit, or magistrate.  
How to proceed on reports of neglect or misconduct by a zillah or city magistrate, or by a register or assistant to a court of circuit or magistrate.

leaving exposed only that part of the back and shoulders on which the stripes ought to fall. It was added, on the 30th December, 1812, that "all prisoners sentenced to be punished with the corah, should be brought before the magistrates immediately previous to the infliction of the corporal punishment; that the magistrate may, by a personal observation, and a reference, if necessary, to the surgeon of the station, satisfy himself that the prisoner does not labor under any bodily infirmity; and that his general state of health at the time, is such as to render him capable of sustaining the punishment, without the probability of endangering his life."

<sup>1</sup> This has been already noticed, in pages 142, 143, under the head of *Courts of Sudder Dewanny Adawlut*; as well as the intention of preparing an annual report of the trials upon which sentence is passed by the court of nizamat adawlut for the information of Government and of the Honorable Court of Directors. It was also mentioned that a volume containing Reports of Select Criminal Cases adjudged by the court of nizamat adawlut, from the year 1805 to the end of 1811, had been printed with an Index. Much interesting information will be found in these Reports, not only respecting the criminal laws actually administered in that part of British India, which is immediately subject to the Presidency of Fort William; but also concerning the morals, habits, and character of some, at least, of the native inhabitants, though it would be unjust to draw any general inferences from the criminality of the very small portion of the community, who are included in the trials, which form the subject of these Reports.



General rule, when a covenanted servant may appear guilty of neglect of duty or other misconduct not provided for by the regulations.

by their registers, assistants, or other ministerial officers, in the same manner as the court of sudder dewanny adawlut is authorized and directed to proceed upon similar reports to that court, of neglect, or misconduct, on the part of the judges of the zillah and city courts; or of the registers, assistants, and other ministerial officers of those courts; or of the provincial courts of appeal; and in all cases, wherein a covenanted servant of the Company, employed in any of the criminal courts, or in any office of police, may appear to the nizamat adawlut to have been guilty of neglect of duty, or of other misconduct, not expressly provided for by the regulations, that court is either to report the same to the Governor General in Council, or to advise and admonish the party, as the case may require.

### *Special Rules for Trials by Courts Martial.*

Enactments of Regulation 10, 1801, already stated

Also those contained in Regulation 2, 1809.

Rules in R. 20, 1810, proposed to be stated under the present head.

But provisions of R. 3, 1809, must be previously noticed.

Preamble to Regulation 3, 1809.

Section 2. The support of the police and the maintenance of the peace within the limits of cantonments.

The enactments of Regulation 10, 1804, "for declaring the powers of the Governor General in Council, to provide for the immediate punishment of certain offences against the State, by the sentence of courts martial," have been already stated under the head of *Amendments of the Mohummudan Criminal Law.*<sup>1</sup> Regulation 2, 1809, "for enabling the commander in chief to delegate the power of appointing general courts martial on native officers and soldiers of detachments from the Bengal army, serving beyond sea; and for determining the number of officers necessary for the formation of such courts martial;" has also been detailed in a miscellaneous part of the third volume of this Analysis, under the head of *Provisions for Native Courts Martial in particular cases.*<sup>2</sup> It is proposed, under the present subordinate title, to state the rules enacted in Regulation 20, 1810, "for subjecting persons attached to military establishments to martial law, in certain cases; and for the better government of the retainers and dependents of the army, receiving public pay on fixed establishments; and of persons seeking a livelihood by supplying the troops in garrison, cantonments, and stations, military bazars; or attached to bazars of corps." But these being partly connected with Regulation 3, 1809, "for the support of the police in cantonments, and military bazars; for defining the powers of the civil and military officers in the performance of that duty; and for fixing the local limits of the said cantonments and bazars:" it is necessary, in the first instance, to specify the provisions of this regulation, though more immediately appertaining to the particular subject of the ensuing section of this work, which expressly relates to the police.

Under the regulations before in force, the charge of the police in military cantonments and bazars was vested in the magistrates and their officers. But this arrangement having, in some instances, been attended with inconvenience, the following rules were enacted, in Regulation 3, 1809, for the more effectual support of the police in places of that description; for defining the powers of the civil and military officers in the performance of that duty, and for fixing the local limits of the cantonments and bazars:—§ 2. "*First.* The support of the police and the maintenance of the peace within the limits of the cantonments and military bazars (which are to be fixed in the manner hereafter stated) are hereby vested in the officers commanding the troops quartered at such places. The commanding officers will, accordingly, adopt

the necessary measures, by means of the troops under their command, for preventing, as far as possible, the commission of thefts, robberies, murders, and other public crimes, within the limits of the said cantonments and military bazars, and for the discovery and apprehension of persons who may at any time be guilty of any such acts. *Second.* Nothing contained in the preceding rule shall however be construed to authorize the commanding officers of cantonments, or the persons acting under their authority in the support of the police, to interfere with respect to assaults and petty affrays, or other offences of inferior magnitude, unless the persons guilty of those offences, shall be apprehended in the actual commission of such acts. *Third.* Any person apprehended under the preceding rules in any of the cantonments or military bazars, on account of the commission of any public crime or offence, shall be delivered over with all practicable expedition to the magistrate of the district in which such cantonments or bazars are situated, and the magistrate shall proceed against the accused in the manner prescribed by the general regulations." § 3. "First. If any person shall have a charge or complaint to prefer against any individual resident in any of the cantonments or military bazars, who may not have been already apprehended by the persons entrusted therein with the support of the police; or if the charge or complaint be of a nature not to authorize those officers, under Clause Second of the preceding section, to interfere in it; the party deeming himself aggrieved is at liberty to prefer his charge or complaint directly to the magistrate, who is hereby authorized and required to proceed with respect to it under the general regulations, in the same manner as if the alleged crime or offence had been committed in any other part of his jurisdiction. *Second.* Under the foregoing clause, the magistrates are of course empowered to issue their warrants and summonses against any persons residing in the cantonments and military bazars, in the same manner as if such persons resided in any other part of their jurisdiction; and the commanding officers of stations are hereby required to afford every protection to the officers of the judges, magistrates, and justices of the peace, in the discharge of the duty entrusted to them, whether any special application shall have been made to them for such aid or support, or otherwise." § 4. "On receipt of this regulation, the limits of the cantonments, including the military bazars attached thereto, at which any division or corps of the army, or any considerable detachment not being less than half of a battalion, may be quartered, shall be fixed by the commanding officer, in concert with the magistrate. The commanding officer at each of those stations will accordingly submit to Government, through the usual channel, as soon as circumstances may conveniently admit, a report framed in concert with the magistrate of the district in which the cantonments may be situated, upon the local limits of the cantonments, forwarding at the same time any separate remarks which the magistrate may wish to make on the subject, for the final orders of the Governor General in Council." § 5. "The above rules shall be considered applicable to all cantonments, in which any considerable body of the troops not being less than half a battalion is quartered, whether the cantonments be situated at the place of residence of the judge and magistrate, or in any other part of the district."

The following preamble to Regulation 20, 1810, will explain the grounds on which the additional rules, contained in that regulation, were enacted:— "By the respective articles of war for the government of his Majesty's and the Honorable Company's troops, all retainers to a camp, and all persons whatever, serving with the forces in the field, though not enlisted soldiers, are to be subject to orders according to the rules and discipline of war. From the great number of native retainers and followers attached to military establishments in India, and the importance of a prompt and orderly discharge

vested in officers commanding the troops.

Commanding officers, or others, in what cases only to interfere, with respect to inferior offences.

Persons apprehended to be delivered over to the magistrate of the district.

Section 3. In what cases persons aggrieved may prefer their complaints to the magistrate of the district.

Magistrates may issue warrants and summonses against any person residing in the cantonments. Commanding officers to afford protection to the officers of the civil authority.

Section 4. Limits of cantonments and military bazars to be fixed by commanding officers in concert with the magistrate of the district. Commanding officer to submit a report, upon the local limits of the cantonments, for the orders of Government.

Section 5. To what cantonments the above rules to be considered applicable.

Preamble to R. 20, 1810.

of their duties to the welfare of the troops, it is necessary that the principle of this article of war should be extended to other cases than that of actual service in the field, to which it is at present confined; and that it should be applied, under certain restrictions, to the maintenance of a proper discipline among the retainers of the army at all times. By Regulation 3, 1809, the support of the police and the maintenance of the peace, within the limits of cantonments and military bazars, are vested in the officers commanding the troops quartered at such places; but the powers of commanding officers under that regulation are restrained to such measures, as may be calculated for the prevention of crimes and the apprehension of persons committing them; and they are prohibited from interfering in cases of petty breaches of the peace, and other offences of inferior magnitude, unless where the parties are taken in the fact; the cognizance of these offences, as well as those of great magnitude, being expressly reserved to the magistrate by that regulation. As however it will further tend to the maintenance of good order, to subject the retainers and dependents of the army to punishment for petty offences by a military tribunal, it has been deemed expedient to transfer the cognizance of such cases, under the restrictions, and in the mode hereafter mentioned, to courts martial, to be assembled for that purpose by commanding officers; and it has further been deemed expedient, for the ease and security of dealers, and for encouraging their resort to military bazars, to vest in military courts, to be assembled by commanding officers, a power of enforcing the payment of small debts; and of deciding on the spot in petty causes of a civil nature arising between officers, soldiers or retainers of the army, and persons carrying on trade in military bazars, or between such retainers or traders; the Governor General in Council has therefore been pleased to enact the following rules." § 2. "All persons serving with any part of the army, and receiving public pay drawn by any officer in charge of a public department appertaining to the army, whether as lascars, magazine men, kalassies attached to magazines or any other department or establishment, native doctors, writers, bhistees, puckallies, syces, grasscutters, mahouts, surwans, or other subordinate servants attached to public cattle, bildars, artificers, or in any other capacity, shall (provided they are borne upon the fixed establishment of the department in which they are employed and not otherwise) be subject to be tried by a court martial for all breaches of their respective duties; and for all disorders and neglects to the prejudice of good order, and of the local regulations established by the commanding officer, or other competent authority, in the cantonment, garrison, station, or other places where the troops, to which they are attached, may be serving." § 3. "Provided that it shall not be competent for such court martial to sentence any persons of the above description to any other or heavier punishment than may now be lawfully inflicted on enlisted soldiers under the 2d article of the 24th section of his Majesty's, or the 2d article of the 15th section of the Honorable Company's articles of war, unless where the forces are serving in the field; for which case provision is already made by the existing articles of war, from which nothing in this regulation is to be understood to derogate." § 4. "Menial servants of officers, within the precincts of any cantonment, garrison, or military station or military bazar, although they shall not be in the receipt of public pay, shall at all times be subject to all such regulations as shall be made by the commanding officer, or other competent authority, for the maintenance of good order in such cantonment, garrison, station, or bazar; and shall be liable to be tried by a native court martial for any breach thereof." § 5. "On receipt of this regulation the limits of the cantonments and garrisons, including the military bazars attached thereto, at which any division or corps of the army, or any considerable de-

Section 2.  
Certain descriptions of persons, serving with the army and receiving public pay, subject to trial by courts martial for breach of duty, or offences against good order, or local regulations in the cantonments or stations to which they are attached.

Section 3.  
Limitation of punishment awarded by courts martial in such cases.

Section 4.  
Menial servants of the officers, though not receiving public pay, liable to trial by courts martial for breaches of the local regulations established in cantonments or stations.

Section 5.  
Limits of cantonments, &c., how to be defined and established.

tachment, not being less than half a battalion, may be quartered, shall be marked out, in all cases in which it has not been already done under Regulation 3, 1809, by the commanding officer, in concert with the magistrate. The commanding officer at each of those stations, from which a report of the nature hereafter described has not been already furnished under Section 4, Regulation 3, 1809, will accordingly submit to Government, through the Commander in Chief, without delay, a report framed in concert with the magistrate of the district in which the cantonments or garrisons may be situated, upon the local limits of the cantonment or garrison; forwarding at the same time any separate remarks which the magistrate may wish to make on the subject, for the final orders of Government. As soon as the limits of the cantonments and garrisons shall be approved and confirmed by Government, on the report of the magistrate and commanding officer above required, plans shall be prepared of the limits of the cantonments and garrisons, including the military bazars attached thereto." § 6. "The plans shall be prepared in quadruplicate, and signed by the commanding officer, and the magistrate of the district; one copy shall be deposited at the head quarter of the station, another at the cutcherry of the magistrate; and the other two shall be transmitted to the commander in chief, by whom one copy will be forwarded to Government." § 7. "The names of all persons having houses, shops, or other buildings or fixed places within the limits of the garrison, cantonment or station, as described in the plans, in which they carry on trade, or otherwise seek a livelihood, by supplying or serving the troops, shall be entered in a register to be kept in the office of the brigade major, or other station staff officer, and to be open to inspection at all reasonable hours: the name of each person shall be entered both in English, and in the language and character commonly used in the district in which the station is situated, and the occupation of the person written opposite to it in like manner with the place of his residence, and the date of the registration." § 8. "No person shall be registered, as attached to the station bazar, without his free consent; and any person so registered shall be entitled at any time to demand his discharge from the registry. Persons registered shall be entitled to the privileges of registry so long only as they continue to carry on trade or other employment relating to the supply or service of the troops, at some house, shop, or fixed place, within the limits abovementioned; and shall be subject, during such time, to all regulations made by the commanding officer, or other competent authority, for the maintenance of good order and fair dealing in the station bazar; and shall be liable to be tried by a native court martial for any breach thereof." § 9. "The names of all persons attached to bazars of corps shall, in like manner, be registered in a book, which shall be kept at the head quarters of the corps, and shall be open to inspection at all reasonable hours: the entries shall be made in the same manner in all respects as those in the registers of station bazars." § 10. "No person shall be registered, as attached to the bazar of a corps, without his free consent; and any person so registered shall be entitled at any time to require his discharge, except when the corps is on actual service, or there is an immediate prospect of its being ordered to march, in which cases it shall be in the discretion of the commanding officer to withhold such discharge so long only as the immediate exigency of the public service requires." § 11. "No person registered as attached to the bazar of a corps shall be entitled to any of the privileges of such registry, except those who ordinarily carry on the trade or employment in respect of which they are registered within the place allotted or commonly used for the bazar of the corps when it is stationary." § 12. "All persons registered as attached to bazars of corps, shall, while they continue so attached, be subject to such regulations as shall be made by

Section 6.  
Plans where to  
be deposited

Section 7.  
The names of  
certain persons  
residing within  
the limits of  
cantonments,  
&c. to be registered in the  
office of the  
brigade major  
or other officer.

Section 8.  
Rules as to  
such registered  
persons

Section 9.  
Persons attached to  
bazars of corps  
to be registered  
in a book at  
head quarters  
Section 10.  
Rules as to  
such persons

Section 11.  
What persons  
are entitled to  
the privileges  
of such registry.

Section 12.  
Such registered  
persons liable  
to local

gulations and to trial by courts martial for a breach of them.

Section 13.  
Limitation of punishment to be awarded by courts martial in such cases.

Section 14.  
Sentences of corporal punishment against persons exempted therefrom may be commuted for a fine.

Section 15.  
Persons above described, liable to trial by courts martial for petty assaults and breaches of the peace within the limits of the cantonments, &c.

Section 16.  
Also for petty thefts not involving violence or outrage.

the commanding officer, or other competent authority, for the maintenance of good order and fair dealing in the bazar, and for the prompt and efficient execution of such services as belong to their respective occupations; and shall be liable to be tried by a native court martial for any breach thereof."

§ 13. "No court martial shall inflict any heavier corporal punishment for the breach of a local regulation on any person attached to a bazar of a corps, or to a station bazar, or on any servant of an officer, than fifty lashes with a cat-o'-nine-tails, or fourteen days confinement, or in aggravated cases, both those punishments; and persons attached to bazars of corps or station bazars, who are above the condition of petty dealers, menial servants, or workmen, shall not be liable to corporal punishment in the first instance for breach of local regulations, but shall be sentenced to pay a fine to the use of Government, which shall in no case exceed sicca rupees one hundred, and shall be levied, if not paid forthwith, under the written order of the commanding officer, grounded on the sentence of the court, by seizure and public sale of such goods of the offender, as may be found within the limits of the garrison, cantonments, or bazar; and if sufficient goods shall not be found within the limits, the offender may be arrested by a written order of the commanding officer, and confined for one month, unless he sooner discharges the fine; and any person attached to a bazar, who shall be sentenced to a fine by a court martial for the breach of any local regulation, and shall fail to discharge the same, shall be liable, in case of conviction for a second offence, to be sentenced to corporal punishment in the same manner as petty dealers, workmen, or menial servants, or to be struck off the register of the station bazar, or bazar of the corps, as the case may be."

§ 14. "If any person deeming himself entitled to exemption from corporal punishment by the preceding section, shall be sentenced thereto by a court martial, the commanding officer shall, upon appeal to him, and proof given to his satisfaction, that such person is entitled to the exemption, commute the punishment for a fine not exceeding sicca rupees one hundred, which fine shall be levied in the same manner as if it had been originally imposed by the court martial."

§ 15. "With a view also to the more effectual maintenance of good order in the garrisons, cantonments, and military bazars, it is hereby enacted that, if any retainer of the army, of the description mentioned in Section 2, of this regulation, or any menial servant of an officer, or any person registered as attached to the station or sudder bazar, shall be charged with the commission of an inconsiderable assault or affray, or other act immediately tending to the breach of the peace and good order of any of the said garrisons, cantonments, or bazars, within the limits thereof, as described in the plans to be approved by Government, the person so accused, shall be tried by a native court martial; and such court martial shall be empowered to punish the offender when convicted, by imprisonment for a term not exceeding twenty days, or by imposing upon him a fine not exceeding fifty sicca rupees, or to subject him to corporal punishment not exceeding fifty lashes with cat-o'-nine-tails, unless the offender be of the description of persons mentioned in Section 2, of this regulation, and the act done involves a military offence, and is so charged; in which case the degree of punishment is to be determined by the rule laid down in Section 3, of this regulation."

§ 16. "If any retainer of the army, of the description mentioned in Section 2, of this regulation, or any menial servant of an officer, or any person registered as attached to the sudder bazar, shall be charged with having committed a petty theft, (that is to say, theft without circumstances of violence and outrage, not exceeding the value of rupees one hundred) within the limits of the cantonment or bazar, such charge shall be tried by a native court martial, which shall have the power of inflicting on the offenders corporal punishment not exceeding one hundred

lashes with a cat-o'-nine-tails, or of imprisoning them for a term not longer than one month." § 17. "If any such petty offences, as are described in Sections 15 and 16, of this regulation, shall be committed within the limits of a garrison, cantonment, or military bazar, by any person not being a retainer of the army, or the menial servant of an officer, or registered as attached to the bazar, the commanding officer shall cause the offender, if found within the limit of the cantonment, garrison, or bazar, to be arrested and sent to the magistrate, who shall enquire into the facts, and punish the offender, if convicted, in the same manner as in other cases of petty offences cognizable by the magistrate under the existing regulations." § 18. "In all cases of crimes committed within the limits of garrisons, cantonments, or military bazars, which are not cognizable before a court martial in the manner described in this regulation, the offender, whatever be his description, if found within the limits, shall be arrested by the commanding officer, and delivered over to the magistrate." § 19. "In all cases in which it may be necessary to execute any process of arrest, criminal or civil, within the limits of a garrison, cantonment, military station, or military bazar, (the process of the supreme court only excepted) the officers entrusted with the execution of such process of arrest, shall, in the first instance, carry the same to the commanding officer, or if he shall happen to be absent, to the senior officer actually present in the garrison, cantonment, or station; and the commanding officer, or such senior officer, upon such process being produced to him, shall back the same with his signature; and shall forthwith use his utmost endeavours to cause the person or persons named in such process to be discovered; and if within the limits of the garrison, cantonment, station, or bazar, to be arrested and delivered according to the exigency of the process, to the civil officer charged with the execution thereof; but nothing herein contained is to be construed to prevent the service by the civil officer in the usual way, of summonses, subpoenas, or other process of mere citation without arrest." § 20. "The provisions of this regulation respecting the trial of petty offences committed within the limits of garrisons, cantonments, military stations, or military station bazars, and the provisions of this regulation respecting the execution of process of arrest before judgment, against registered persons attached to station bazars, are to be considered as applicable only to those garrisons, cantonments, and stations, the limits whereof shall be laid down in plans approved and confirmed by the Governor General in Council, in the manner described in Section 5, of this regulation; and they shall be in force in such garrisons, cantonments, and military stations, respectively, from the time that the plans so approved and confirmed shall have been deposited at the head quarters, and in the cutcherry of the magistrate, in the manner prescribed in Section 6. With regard to those garrisons, cantonments, or stations, to which it may not be found practicable to assign local limits for the purposes of this regulation, special provisions will be made hereafter, according to the circumstances of each case: in the mean time the provisions of Regulation 3, of 1809, are to be considered as in full force with respect to those garrisons, cantonments, and military stations, and the station bazars attached thereto." § 21. "The charge of the police, over persons registered as attached to bazars of corps, is vested, to the extent specified in Regulation 3, of 1809, and in this regulation, in the commanding officers of such corps, so long as such persons shall be *bonâ fide* carrying on the occupation in respect of which they are so registered; all such petty offences as are specified in this regulation, shall be tried and punished by a court martial, when committed by this description of persons, under the same rule and restrictions, as to the mode and measure of punishment, as are before laid down with respect to offences committed by persons attached to sudder

## Section 17.

How persons not attached to military stations, charged with petty offences committed within the limits of those stations are to be proceeded against.

Section 18. All persons accused of crimes committed within the limits of military stations, but not cognizable by courts martial, to be arrested and delivered over to the magistrate.

Section 19. How process of arrest, either civil or criminal, is to be executed within the limits of military stations.

Such rule not to extend to the service of process short of arrest.

## Section 20.

What description of military stations these rules are for the present confined to.

## Section 21.

The police over persons attached to the bazars of corps vested in the commanding officer.

The magistrates to have concurrent jurisdiction in certain cases

Section 22  
How actions of debt or other personal actions not exceeding 200 rupees, against officers, soldiers or others, are to be tried and determined

bazars; provided that when such offences are committed at the distance of above one coss from the stations of the corps, or from its actual position on a march, and the offender is taken in the fact, the magistrate shall have a concurrent jurisdiction, and may proceed against the offender as in other cases; or, at his discretion, remit him to the commanding officer, to be tried by court martial." § 22. "Actions of debt, and all personal actions, against

officers, soldiers, retainers, of the description mentioned in Section 2, of this regulation, persons registered as attached to sudder bazars, or bazars of corps, or menial servants of officers, shall be cognizable before a military court, and not elsewhere; provided the value in question does not exceed sicca rupees two hundred, and the defendant was a person of the description abovementioned, when the cause of action arose: such courts shall be composed of European officers when European officers may be parties concerned, and in all other cases, of native officers, with an European officer to superintend and record the proceedings, and shall in all practicable cases consist of five members, and in no instance of less than three members, one of whom shall preside. Such courts shall be convened monthly by the commanding officers of corps and stations, and shall be holden on some convenient day before the issue of the pay for each month, and it shall be competent to such courts, upon finding any debt, or damage due, either to award execution generally, or to direct, as they shall see fit, that the whole or any part thereof shall be stopped and paid over to the creditor out of any pay or public money which may be coming to the debtor, either in the current or any future month. Where the execution is awarded generally, the debt, if not paid forthwith, shall be levied by seizure and public sale of such of the debtor's goods as may be found within the limits of the garrison, cantonment, or military bazar, under a written order of the commanding officer, grounded upon the judgment of the court; and if sufficient goods are not found within the limits, the debtor shall be arrested by like order of the commanding officer, and imprisoned in some convenient place of confinement within the limits of the garrison, cantonment, or military bazar, for the space of two months, unless the debt be sooner paid; and his goods, if found within the limits at any subsequent time, shall be liable to be seized and sold in satisfaction of the debt, under a written order of the commanding officer." § 23. "The courts martial, and other military courts authorized to be holden by the provisions of this regulation, are to be convened by officers commanding stations, garrisons, or detachments, as the case may be; and when single corps are employed in separate or detached stations, by the officers commanding the corps so detached." § 24. "No process of arrest before judgment shall issue from any civil court, in any action, against a person residing or carrying on any trade or occupation, relating to the service or supply to the troops, at any house, shop, or fixed place within the precincts of a garrison, cantonment, or military bazar, unless it be averred in the plaint that the cause of action exceeds sicca rupees two hundred, or that the defendant, though resident or carrying on such trade or occupation within the military limits, is not registered, or that, though registered, he has not, within the space of three months preceding, truly and *bonâ fide* exercised the occupation in respect of which he is registered within the limits; in all cases where such averment shall be made, the judge issuing the process shall indorse upon it as the case may be, "Cause of action above sicca rupees two hundred," or "Defendant not registered," or "Defendant not entitled to privilege of registry," and shall sign the indorsement. All process so indorsed shall, if the defendant be within the limits of the garrison, cantonment, or military bazar, be delivered in the first instance to the commanding officer, and be executed through him as in other cases; but if the defendant be found without the limits of

Section 23  
By whom courts martial are to be convened for the purposes specified in this regulation  
Section 24  
No process of arrest before judgment to issue from the civil courts, unless in cases exceeding 200 rupees. Rule in cases exceeding that amount

the garrison, cantonment, or military bazar, he may be arrested by the civil officer on process so indorsed; and in all cases of such arrests, whether made within or without the limits, if, at the trial, the plaintiff shall not prove, according to the purport of the indorsement, either that the cause of action exceed sicca rupees two hundred, or that the defendant, though resident or carrying on such trade or occupation as abovementioned within the military limits, was not registered, or that, though registered, he had not, during the space of three months preceding, truly and *bonâ fide* exercised the trade or occupation in respect of which he is registered within the limits, he shall be nonsuited with costs." § 25. "No person registered as attached to the bazar of a corps, and *bonâ fide* carrying on the trade or occupation in respect of which he is registered, in the place allotted or ordinarily used for the bazar of the corps, shall be liable to be arrested on process before judgment out of any civil court, for any cause of action not exceeding sicca rupees two hundred. In all cases in which persons of this description are arrested by civil process, it shall be declared in the plaint, that the cause of action does exceed sicca rupees two hundred, in which case the judge shall indorse on the process, "Cause of action exceeding sicca rupees two hundred," and shall sign the indorsement; and if the plaintiff, at the trial of the cause, shall not prove a cause of action exceeding sicca rupees two hundred, he shall be nonsuited with costs: and in case any person registered as attached to the bazar of a corps, and *bonâ fide* carrying on the occupation in respect of which he is registered within the limits allotted, or ordinarily used for the military bazar, shall be arrested under civil process, which is not so indorsed, the commanding officer, if he shall, after due inquiry, be satisfied that such person was so *bonâ fide* carrying on the occupation, in respect of which he is registered within the limits aforesaid, shall make out and sign a certificate in the following form:—

"I, \_\_\_\_\_, commanding officer of \_\_\_\_\_, do hereby certify that \_\_\_\_\_, of \_\_\_\_\_, was registered on the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, as a person attached to the bazar of the corps in the occupation of a \_\_\_\_\_, and that he did at the time of his being arrested on the \_\_\_\_\_ day of \_\_\_\_\_ last, actually and *bonâ fide* follow that occupation as a person attached to the bazar of the corps, within the space allotted or ordinarily used for the bazar."

Upon such certificate, signed by the commanding officer, being produced to the judge who issued the process, he shall cause the same to be recorded in his cutcherry, and shall make an order for releasing the person arrested from confinement; but the plaintiff shall be at liberty, if he thinks fit, to proceed in his action, and shall be bound to prove at the trial, either that the cause of action exceeds sicca rupees two hundred, or that the defendant was not registered as attached to the bazar of the corps, or that, although registered, he was not actually and *bonâ fide* carrying on the occupation in respect of which he was so registered, at the time of the action brought, and in failure of such proof, he shall be nonsuited with costs." § 26. "Nothing in this regulation is to be construed to give any authority to commanding officers to dispossess proprietors of land or houses which may be situated within the limits of military bazars, although such persons shall refuse to be registered as attached to the bazar, or shall have lost, or forfeited, or resigned, their privilege of registry. In all cases in which the ground allotted to those bazars, or any part of it, is the property of Government, and the occupation of individuals has been declared by Government merely permissive, the commanding officer is empowered to make such general regulations as he may think fit, (subject to the approbation of the Governor General in Council)

Section 25.  
Similar rule,  
as to persons  
attached to  
the bazar of a  
corps

Section 26.  
Commanding  
officers not au-  
thorized to dis-  
possess propri-  
etors of land  
or houses with-  
in the limits  
of military  
bazars.  
Rules as to  
lands the pro-  
perty of Go-  
vernment,  
within those  
limits



respecting the tenure or occupation of houses, shops, or other fixed places, situated upon such ground as belongs to Government, which regulations shall, in all cases, be reduced to writing; and shall, after receiving the approbation of the Governor General in Council, be published in station orders, with a translation in the language commonly used in the district; and the same shall not be of force until fourteen days after they shall have been so published within the limits of the station bazar."

Declaration of power of the magistrates to give effect to military sentences contained in R. 4 1820, - 2.

It may be added under the present head, that doubts having been entertained, as to the authority of the zillah and city magistrates, under the regulations in force, to give effect to the sentence of a general court martial, adjudging imprisonment with hard labor, among the convicts of the civil power; it is declared, in Section 2, of Regulation 4, 1820, "that any zillah or city magistrate shall be competent to give effect to the sentence of a general court martial, adjudging imprisonment with labor, among the convicts of the civil power, on the offender being delivered into his custody, and the sentence being certified to him for the purpose of his giving it effect, by the Judge Advocate General, or his deputy, under the authority of the Commander in Chief; and the sentence so certified shall serve as the magistrate's warrant and authority for carrying it into effect according to the terms of it."

*Special rules for the trial of persons charged with crimes against the State.*

Preamble to Regulation 1, 1799, and 10, 1803, for the trial of persons charged with crimes against the State

Under the rules established for the ordinary administration of criminal justice in the provinces subject to the presidency of Fort William, the trials of persons charged with offences, are held before one judge of the local court of circuit, and the law officer appointed to sit with him, as fully stated under a preceding head of the present section; but in particular cases, when the crime charged may be treason, rebellion, or other offence against the State, and it may not be cognizable by a court martial, under the provisions of Regulation 10, 1804, ' it may be expedient that the persons so charged should be brought to an immediate trial before all the judges of the court of circuit to which the parties may be amenable; or before a special court to be convened by the executive Government for that purpose; the following rules were therefore enacted in Regulation 4, 1799, to be in force throughout the provinces of Bengal, Behar, Orissa, and Benares; and were re-enacted for the ceded provinces in Regulation 20, 1803. § 2. "In all cases, in which a person subject to the ordinary jurisdiction of the courts of circuit, shall be charged with treason, rebellion, or other crime against the State, the Governor General in Council, or the Executive Government at Fort William, for the time being, shall be competent to order the person or persons so charged, to be brought to immediate trial before all the judges of the court of circuit, to which such person or persons may be amenable; or before any other special court, which it may be judged expedient to appoint for this purpose, consisting of three judges, and two Mohummudan law officers; or such other number of judges and law officers, as may be thought proper." § 3. "The courts convened under the preceding section, whether composed of the judges of the courts of circuit, or otherwise, are to try the prisoners brought before them in the same manner as they would have been tried before the ordinary courts; and shall exercise all the powers and authorities vested in the courts of circuit by the regulations; except that their sentence, whether of acquittal

Section 2. Executive Government may convene courts for the immediate trial of persons charged with crimes against the State.

Section 3. Courts so convened to proceed in the ordinary manner and to exercise all the powers vested in the courts of circuit, except that the sentence are to

or punishment, shall in every instance be reported, with their proceedings, to the court of nizamat adawlut, previous to carrying the same into execution ; and they are to be guided as to the place where they are to assemble ; the persons to be tried by them ; and all other particulars not provided for in the regulations, by the special orders which they may receive from the Executive Government, or from the court of nizamat adawlut." § 4. " In case of the death, or of the absence from indisposition or other cause, of any of the judges, or law officers of the courts which may be appointed to try offenders under this regulation, the remaining judge or judges, or law officer or officers, shall be competent to form a court, and proceed with the trial or trials, until provision can be made by the Governor General in Council, or by the Executive Government for the time being, for supplying the place of such judge or judges, or law officer or officers, if any such provision shall be deemed necessary ; or if no such provision be made, the powers and proceedings of the said courts shall not be affected by the death or absence of such judge or judges, or law officer or officers, any more than if the same had never taken place." § 5. " The nizamat adawlut, on the receipt of any trials referred to them under this regulation, are to proceed thereupon according to the rules in force with respect to other trials referred to them ; except that they are in every instance to report their sentences, with the whole of the proceedings held upon the case, to the Governor General in Council, or to the Executive Government for the time being ; and are to wait the orders of Government before they direct their sentence to be carried into execution." § 6. " The magistrates of the several zillahs, and cities, are enjoined to give their utmost assistance, as far as may depend on them, in expediting the trial of all persons charged with the crimes mentioned in this regulation ; and in the event of any person or persons being charged with such crimes before them in the first instance, they are to give immediate notice thereof to the Governor General in Council, for his orders. The magistrates are also required to pay immediate and strict attention to all orders which may be transmitted to them by the Executive Government, for the apprehension of persons charged as aforesaid, or for making any enquiry respecting such persons, or for committing them to take their trials before the ordinary courts of circuit, or before the special courts described in this regulation."

be reported to the nizamat adawlut previous to their being carried into execution.

Section 1.  
Provision for the death or absence of any of the judges, or the law officers of the court.

Section 5.  
Nizamat adawlut to report their sentence and the whole of the proceedings to the Executive Government and await their orders.

Section 6.  
Magistrates to assist in expediting the trials. If any persons shall be charged before them in the first instance, with crimes against the State, they are to report the same to Government and to pay strict attention to the orders of the Executive Government thereon.

*Special rules for the trial of crimes and misdemeanors, charged against the Hill-people of Rajmahl and Boglepore.*

The reasons of policy and justice, upon which these rules were founded, are stated in the preamble to Regulation 1, 1796, which is therefore exhibited at length, with the provisions referred to in it. " The hills situated to the south and west of Rajmahl, and in other parts of the zillah of Boglepore, are inhabited by a distinct and uncivilized race of people, differing entirely in manners, customs, and religion, from the inhabitants of the circumjacent country, and who, as far as can be traced, never acknowledged the authority of the native Government. Being destitute of manufactures, and but little acquainted with agriculture, they subsisted principally by plunder ; and their incursions into the low country, which were attended with every species of cruelty, had almost desolated the districts to which they were extended. These people were at length induced by the late Mr. Augustus Cleveland, the collector of the zillah, to relinquish their predatory habits, and to submit to the authority of the British administration. Amongst the measures which he adopted with the sanction of Government, for establishing good order throughout the hills, certain pecuniary allowances were

Special rules for the trial of crimes and misdemeanors charged against the inhabitants of the Rajmahl and Boglepore hills. Preamble to R. 1, 1796, stating grounds of this regulation.

granted to the chiefs of the several hills, on condition of their preserving the peace of their respective jurisdictions; and with a view to conciliate the inhabitants, as well as in consideration of their uncivilized state, and entire ignorance of the language, laws, and customs of the Mohummudans and Hindoos, it was determined on the 14th June, 1782, that the inhabitants of the hills should not be subject to the jurisdiction of the ordinary tribunals of the country; but that all crimes and misdemeanors committed by them should be tried by an assembly of their chiefs, to be held at the town of Boglepore, or Rajmahl, or elsewhere in the district, under the superintendence of the magistrate; who was ordered, in particular cases, to report the sentences passed by the assembly for the revision of the Governor General and Council. This mode of trial having been found to be highly satisfactory to the hill people, and having answered the purposes of justice, the Governor General in Council has resolved to continue it; but deeming it consistent with the principles of the regulations, for the administration of justice, that the revision of the sentences passed by the assembly of hill chiefs, should be transferred from the Governor General in Council, to the nizamat adawlut, under special rules; he has passed this regulation, which is to be considered in force from the date of its promulgation."

Section 2.  
Hill people in  
Rajmahl and  
Boglepore ex-  
cepted from  
the general  
rules of criminal  
justice.  
Section 3.  
Magistrate  
how to proceed  
on criminal  
charges against  
them.

§ 2. "The hill people in the districts of Rajmahl and Boglepore shall not be tried for crimes or misdemeanors by the Mohummudan law, nor by the rules and regulations at present in force, or which may be hereafter enacted, for the trial of other individuals subject to the jurisdiction of the ordinary criminal tribunals of the country." § 3. "All hill people who may be accused of crimes or misdemeanors, shall, on their apprehension, be brought before the magistrate of Boglepore, who shall cause the complaint, if not preferred to him in writing, to be committed to writing, and attested by the complainant with his signature or mark; and if it shall appear to him on examination of the complainant, or any person, or persons, said to be acquainted with the circumstances of the case, on oath, to be administered and taken according to their religious persuasion, or custom, that the crime, or misdemeanor, of which the prisoner may be accused, was never committed, or that there is no ground to suspect him of having been concerned in the commission of it, the magistrate shall cause the prisoner to be forthwith discharged, recording his reasons for so doing." § 4. "*First.* If it shall appear to the magistrate, that the crime or misdemeanor was actually committed, and that there are grounds for suspecting the prisoner of having been concerned in the commission of it, the magistrate shall cause him to be committed to prison or held to bail, as may appear to him proper, to take his trial before an assembly of hill chiefs, naibs, and manjeys, to be convened for that purpose by the magistrate; who is required to adopt such measures as may appear to him necessary to ensure the attendance of the prosecutor, and the witnesses on the part of the prosecution, and the prisoner, when the trial shall come on. *Second.* In all cases of a prisoner being committed or held to bail for trial before a hill assembly, the magistrate, immediately after passing the order of commitment, shall question the prisoner as to whether he wishes to have any witness or witnesses examined in his defence before the assembly, and in the event of the prisoner answering in the affirmative, shall cause a list of the witnesses named by him, specifying their designations and places of abode, to be taken down and recorded on his proceedings; or in the event of the prisoner's replying in the negative, shall cause such answer to be recorded on his proceedings for the information of the assembly, and eventually of the nizamat adawlut." *Third.* An observance of the foregoing rule will leave all prisoners, committed or held to bail for trial before the assembly, without any just ground of complaint that they have not been

Section 4.  
Clause 1.  
In what cases  
to be committed,  
or held to  
bail, for trial  
before an assembly  
of hill  
chiefs.

Clause 2.  
Prisoner to be  
questioned if  
he wishes to  
have any witnesses  
examined before  
the hill assembly,  
and his  
answer recorded  
on the magistrate's  
proceedings.

Clause 3.  
Any other witnesses  
named by the prisoner  
or previously

allowed to bring witnesses in support of their innocence; but as it may happen from want of recollection or other cause, a prisoner, at the time of his commitment may omit to name a witness whose evidence he may afterwards be desirous to adduce upon his trial, the magistrate shall observe it as a rule, in the event of any prisoner, who may be committed or held to bail to take his trial before the assembly, desiring, previous to the commencement of the sitting of the assembly, the examination of any witness or witnesses upon his trial, although the same may not have been named by him at the time of his being committed, or held to bail, he is to be careful to cause the attendance of such witness or witnesses, as well as of those before named, at the time fixed for the trial of the party who may desire their examination. *Fourth.*

The magistrate is to furnish the assembly, together with his proceedings on each trial referred to them, with lists of the witnesses who may have been summoned at the requisition of the prosecutor or the prisoner, specifying those who are in attendance, and such as are absent; with the cause of the non-attendance of the latter. To furnish the assembly with the fullest and most accurate information on the non-attendance of any absent witness, the above lists shall be accompanied with the original returns made to the magistrate by the nazir, and person deputed on his part, to serve the summons on any witness, who may not be in attendance; and the nazir and the person so deputed on his part shall be kept in attendance on the assembly, to answer any interrogatories which the members thereof may judge it necessary to put to them. By this means, the assembly will be enabled to ascertain the real causes of the non-attendance of the witnesses, by their own inquiry; and it is expected they will in every instance make such inquiry, as far as may be necessary to satisfy themselves, and the court of nizamat adawlut, in cases referrible to that court, as hereafter directed, that all due measures have been taken to cause the attendance of all the witnesses, both on the part of the prosecutor and the prisoner." § 5. "The magistrate is empowered to hear all petty complaints that may be brought before him, and to decide thereon whenever he can adjust them to the satisfaction of both parties; but in cases in which this cannot be effected, and the party accused shall appear to him deserving of punishment, he is invariably to commit, or hold to bail the prisoner, to take his trial before the ensuing assembly." § 6. "Whenever the complaints specified in the preceding section shall appear to the magistrate to be litigious, vexatious, or groundless, he is authorized to punish the complainant by confinement for fifteen days, or by corporal punishment, not exceeding fifteen strokes of a rattan." § 7. "An assembly of hill chiefs, naibs, and manjeys, shall be convened by the magistrate twice in every year, or as often as may be necessary, for the trial of hill people charged with crimes or misdemeanors, under the rules and customs prevalent among them." § 8. "The magistrate is enjoined to cause to be administered to the chiefs, naibs, and manjeys, who are entitled to sit in judgment, and to pass sentence on the prisoners brought before them previously to their entering upon the duties for which they are convened, the oath which may be considered by them most solemn and binding. It not having been customary however to administer an oath to the inferior manjeys, who have only a deliberative voice, they are not to be sworn." § 9. "The magistrate is empowered to cause the assembly to be held in any part of the zillah of Boglepore, which he may consider most convenient, and to adjourn the assembly as soon as the business for which it may have been convened shall be completed."

§ 10. "The assemblies are to be held in the presence of the magistrate, who is authorized to suggest such questions to be put by the court to the witnesses, or to the prisoner, as he may think necessary, as well for the purpose of bringing all the circumstances of the case before the court, as for enabling

to the sitting of the assembly, to be summoned by the magistrate.

Clause 4. Lists of witnesses and returns to service of summonses upon such as are absent, to be laid before assembly.

Nazir and person deputed to serve the summons to be also kept in attendance. Inquiry to be made by assembly respecting absent witnesses.

Section 5. Magistrate may hear petty complaints. And adjust them to satisfaction of the parties.

Section 6. Litigious and groundless complaints how punishable by the magistrate.

Section 7. Assembly to be convened twice in every year; or as often as necessary.

Section 8. Oath to be administered to hill chiefs, naibs, and manjeys.

Section 9. Assembly, where to be held; and when adjourned.

Section 10. Magistrate to be present at assemblies. And may suggest questions.

to witnesses,  
on the prison-  
er.  
Also to cause  
observance of  
regularity

But not to inter-  
fere in delib-  
erations and  
sentences of  
the court.  
Section 11.  
Magistrate  
may confirm  
sentences for  
confinement,  
not exceeding  
fourteen years.  
And cause such  
sentences to  
be executed,  
or mitigated

Section 12.  
In what cases  
the proceed-  
ings to be re-  
ferred to the  
nizamut adaw-  
lut

Section 13.  
Clause 1.  
Proceedings  
to be revised,  
and sentence  
passed, by the  
nizamut adaw-  
lut

Clause 2.  
Restriction in  
cases of capi-  
tal punish-  
ment.

Clause 3.  
Mutilation  
commutable to  
imprisonment.

Clause 4.  
Option of next  
of kin to par-  
don, or receive  
a compensa-  
tion, in cases  
of murder, not to  
be admitted.

Clause 5.  
Nizamut adaw-  
lut how to  
proceed, if  
the prisoner be  
proper ob-  
ject of mercy.

Section 14.  
Records of tri-  
als referable  
to nizamut ad-  
awlut, when to  
be transmitted.

the nizamut adawlut, to decide finally on such cases as may be ultimately submitted to them. He shall also cause the assembly to observe in their proceedings, as much regularity as circumstances will admit; and he is authorized to allow such examinations as may have been taken before him, in the first instance, and shall have been fully and freely admitted by prisoners on their trial to form a part of the proceedings. But he shall not exercise any interference whatever, nor suffer his officers, or any person, not being a member of the court, to interfere in any respect, with the deliberations or sentences of the court." § 11. "If sentence of confinement shall be passed on a prisoner for a term not exceeding fourteen years, the magistrate, provided he shall approve of the sentence, is authorized to confirm it, without any reference to the nizamut adawlut. The magistrate shall carry such sentences into immediate execution if he shall approve of them; or he shall mitigate the punishment adjudged by them if it shall appear to him too severe. But in every instance this discretion shall be exercised by him, he is required to report the circumstances to the nizamut adawlut, and to state his reasons to that court for any alteration he may make in the sentence of the assembly." § 12. "Should the sentence adjudge the offender or offenders to suffer death, or mutilation, or imprisonment for a term exceeding fourteen years, the magistrate is to transmit the original proceedings held on the trial, to the nizamut adawlut, with his opinion on each case." § 13. "*First.* The court of nizamut adawlut shall revise the proceedings on the trials transmitted to them under the preceding section, and shall confirm or alter the sentences, or pass such sentence as they may judge equitable, under the rules and restrictions contained in the following clauses. *Second.* It shall not be competent to the nizamut adawlut to pass sentence of capital punishment on any prisoner who may not have been adjudged to suffer death by the assembly. *Third.* All sentences of mutilation, provided the court shall be satisfied of the prisoner's guilt, shall be commuted to imprisonment for fourteen years, if the prisoner shall have been sentenced to lose two limbs; and for seven years, if he shall have been sentenced to lose one limb. If the court, on consideration of the case, shall not consider the prisoner deserving of so long a period of imprisonment as is above prescribed, they shall restrict it to such shorter period as they may think proper. *Fourth.* A custom having obtained amongst the hill people, in certain cases of murder, of leaving the option to the next of kin to the deceased, either to pardon the murderer, or to demand retaliation, or a pecuniary compensation, the operation of this custom shall not be admitted. But in all cases in which a prisoner shall be pronounced by the assembly guilty of murder, and the case shall be such, that the prisoner would be liable to suffer death, supposing the option above-mentioned were to be continued, and the heir or heirs should demand retaliation, the prisoner shall be sentenced to undergo capital punishment, and shall suffer death accordingly. *Fifth.* In all cases in which a prisoner shall be sentenced to suffer death by the assembly of hill chiefs, and the nizamut adawlut shall deem him a proper object of mercy, the court shall submit the case to the Governor General in Council, and recommend a pardon, or such commutation of the sentence, as may appear to them proper, on a consideration of the circumstances of the case." § 14. "The magistrate, within ten days after the adjournment of every hill court, or as much earlier as circumstances may admit, shall transmit to the nizamut adawlut, a Persian record (to be obtained through the medium of the *bundwaries* or interpre-

<sup>1</sup> This rule is modified by Section 2, of Regulation 14, 1810, which empowers the court of nizamut adawlut to grant a remission or mitigation of punishment, without referring the case to the Governor General in Council.

ters) of all trials that are referrible to them, with a separate letter containing his remarks on each particular case." § 15. "The register to the nizamat adawlut, within six days after every final sentence shall be passed, shall transmit a copy of it, under the seal of that court, and attested with his official signature, to the magistrate of Boglepore; who shall cause the same to be executed without delay, reporting to the nizamat adawlut the manner in which the sentence has been enforced." § 16. "The magistrate shall include the names of the hill prisoners in the 1st, 3d, 4th, 5th and 6th reports, which he is required to keep, and transmit monthly to the nizamat adawlut, by Section 30, Regulation 9, 1793, according to their respective descriptions; and to consider them when apprehended, and after sentence, in every other respect in the same situation as the rest of the prisoners under his charge." § 17. "In cases coming under the cognizance of the magistrate of Boglepore, in any respect connected with the trial of hill prisoners, for which no specific rule is prescribed in these regulations, he is to act according to justice, equity, and good conscience; bearing in mind, that he is to show every indulgence and attention to the prejudices and customs of the hill people, consistently with the principles of justice."

Section 15.  
Register of  
nizamat ad  
awlut to com  
municate sen  
tence of that  
court, within  
six days.  
Section 16.  
In what re  
ports hill pri  
soners to be  
included.  
Section 17.  
Magistrate  
how to act in  
cases, for  
which no spe  
cific rule is  
prescribed.

*Special rules for the trial of persons charged with heinous offences in Kumaoon, and other tracts of territory ceded by the Rajah of Nepal.*

Of the territories ceded to the British Government by the Rajah of Nepal, under the treaty of peace concluded on the 2d day of December, 1815, many portions have been since restored to the native chiefs, to whose authority they were formerly subject, or have been transferred to the independent authority of other native chieftains or powers. The portions of territory ceded by the Rajah of Nepal, which have been retained under the authority and dominion of the British Government, are as follow:—

Preamble to  
R. 10, 1817

1st, The tract of country called Deyra Doon, heretofore forming a part of Gurhwal. 2nd, The province of Kumaoon. 3d, Jounsar, Bawur, Poondur, and Sundokh, and other small tracts of country situated between the rivers Jumna and Sutlege. By the provisions of Regulation 4, 1817, the tract of country denominated Deyra Doon, has been formally annexed to the district of Seharunpore, and the laws and regulations in force in the latter district, have, with certain exceptions, been extended to the Deyra Doon: local circumstances however rendered it inexpedient that a similar arrangement should be adopted in the province of Kumaoon, or in the reserved tracts of country situated between the rivers Jumna and Sutlege. The administration of the police, and of civil and criminal justice, with the management of the revenues, as well in Kumaoon, as in the several places last mentioned, is conducted by British officers, under instructions issued for their guidance by the Governor General in Council. Embarrassment however having been experienced in the several places abovementioned, from the want of a suitable tribunal for the trial of prisoners charged with offences of a heinous nature, the Vice President in Council, with a view to provide for the due and deliberate investigation of charges of that nature, enacted the following rules in Regulation 10, 1817, to be in force from the period of their promulgation.

§ 2. "The British officers who now are, or hereafter may be invested with the charge and superintendence of the police, and with the administration of criminal justice in the province of Kumaoon, or in the several reserved tracts

Section 2.  
For British  
officers in  
charge of Ku  
maoon and  
other tracts of  
territory cede  
d, &c.

of Nepal, not to award punishment against offenders charged with certain crimes of a heinous nature.

Section 3.  
Such offenders how to be proceeded against.

Section 4.  
Commissioner to be appointed by Government.

Section 5.  
Powers vested in the commissioner.

Section 6.  
Commissioner authorized to release the prisoner if not convicted.

Section 7.  
Commissioner to refer the case to the court of nizamat adawlut, if the charge be proved.

Section 8.  
With a report and the proceedings on the case.

Section 9.  
Court of nizamat adawlut to pass their final sentence.

Section 10.  
Sentence how to be carried into effect.

Section 11.  
In what cases the local officers may take cognizance of crimes committed within the territories of independent states or territories.

The rules contained in certain sections

of territory situated between the rivers Jumna and Sutlege, are hereby prohibited from awarding punishment against any persons charged before them with having been concerned, either as principals, or as accomplices, in the commission of the following offences, viz. murder or any species of homicide, not manifestly accidental or justifiable; robbery by open violence, as defined in Section 3, Regulation 53, 1803; violent affrays attended with serious casualties or circumstances of aggravation; treason, or rebellion against the State." § 3. "If any person, subject to the jurisdiction of the British officers above alluded to, whether from local residence, or from the perpetration of a criminal act within the limits of the British territory under their respective superintendence, shall, on due and careful investigation, appear to have been concerned either as a principal or as an accomplice in the commission of any of the crimes abovementioned, such person shall be kept in close custody, and shall be committed to take his trial before a commissioner, to be nominated and appointed for that purpose by the Governor General in Council." § 4. "It shall be the duty of the local officer, immediately on making the commitment, to report the circumstance to the Governor General in Council, who will take the necessary measures for nominating an experienced judicial officer as commissioner to hold trials of this nature, at such time and place as may appear proper, in each instance, or at such stated periods as may be found convenient." § 5. "In the conduct of the trial, the commissioner will exercise the same powers as are vested in judges of circuit, and will be guided by the spirit and principles of the regulations in force in the ceded and conquered provinces; provided, however, that it shall not be necessary that any law officer should attend the trials, or that any *futwá* should be required in such cases." § 6. "If the commissioner should be of opinion that the crime charged against the prisoner is not established by the evidence, he shall issue his warrant for the release of the prisoner." § 7. "If the commissioner shall consider the crime charged against the prisoner to be established, he shall either refer the case for the final sentence of the court of nizamat adawlut, or, if the case be within the competence of judges of circuit, under the regulations in force in the ceded and conquered provinces, he shall issue his warrant for the punishment of the criminal." § 8. "If the case shall be referred to the nizamat adawlut, it shall be the duty of the commissioner to forward to that court, a full report of the case, together with his own proceedings, and those of the officer by whom the commitment may have been made." § 9. "On receipt of the proceedings, the court of nizamat adawlut will, without requiring any *futwá* from their law officers, pass such sentence or order as, on due consideration, they may deem proper and consistent with the spirit and principles of the regulations in force in the ceded and conquered provinces." § 10. "The sentence of the nizamat adawlut, whether for the release or punishment of the prisoners, shall be issued through the channel of the commissioner who may have held the trial, and shall be duly enforced by the local British officer by whom the commitment may have been made, or who may at the time be entrusted with the management of the local police." § 11. "First. Whenever a native subject of the British Government, charged with having been concerned in the commission of a criminal offence within the territories of any independent state, or chieftain, situated in the vicinity of Kumaoon, or of the reserved tracts of country between the Jumna and Sutlege rivers, shall be apprehended by, or shall be delivered up to, the British officers invested with the charge of the police in those places respectively; the officers in question shall be deemed competent to investigate the charge, and to release or punish the accused under the general powers vested in them by the Governor General in Council. Second. Provided however, that if the charge shall be of the nature of any

of those described in Section 2, of this regulation, the local officers shall proceed in the manner directed in Sections 3 and 4, of this regulation, and the commissioner who may be appointed to hold the trial, as well as the court of nizamat adawlut, shall in such cases be guided by the provisions of Sections 5, 6, 7, 8, 9, and 10, of this regulation." § 12. "It shall not be competent to the local officers intrusted with the administration of criminal justice in Kumaon, and in the several reserved tracts of territory situated between the rivers Jumna and Sutlege, or to any commissioners who may be appointed under this regulation, or to the nizamat adawlut, to take cognizance of any crime or offence which may have been committed in any part of the tracts of country above adverted to, previously to the 15th May, 1815, being the date of the convention by which they were surrendered to the Honorable the East India Company." § 13. "No part of the regulations in force in the ceded and conquered provinces, by which the punishment of the crimes specified in Section 2, of this regulation, may be enhanced beyond the punishment ordinarily inflicted for such crimes, according to the former laws and usages in force in those tracts of country, shall be considered applicable to persons convicted of having committed those crimes previously to the promulgation of this regulation." § 14. "In cases however in which the penalties established by the regulations in force in the ceded and conquered provinces, for murder or other species of homicide; robbery by open violence; violent affrays attended with serious casualties or circumstances of aggravation, or for treason and rebellion against the State, may appear to be more lenient than those to which the offenders would have been subjected under the pre-existing laws and usages of Kumaon, and of the reserved tracts of territory situated between the rivers Jumna and Sutlege, such offenders shall nevertheless have the benefit of the provisions now established, supposing the offences to have been committed between the 15th May, 1815, and the period of the promulgation of this regulation."

of this regulation to be considered applicable to such cases.

Section 12. Crimes committed previously to the 15th May, 1815, not cognizable by the British officers.

Section 13. Sentence how to be regulated with regard to offences committed between the 15th May, 1815, and the period of the promulgation of this regulation.

Section 14. The preceding note likewise applicable to this section.

*Special rules for the trial of certain offences committed by natives of India within the limits of the foreign settlements of Chandernagore and Chinsurah.*

The provisions contained in Regulations 1, and 16, of 1805, in Regulation 2, 1808, and Regulation 9, 1809, for the administration of civil and criminal justice in the settlements of Chandernagore and Chinsurah, whilst those settlements were under the British Government, ceased, of course, to be in force, on the restoration of those settlements to the respective authorities of their Majesties the King of France, and the King of the Netherlands. It has, however, been deemed expedient (in concert with the local authorities of Chandernagore and Chinsurah) to provide for the cognizance of criminal offences of a heinous nature, committed within those settlements by natives of India, to which offences the jurisdiction of the established criminal courts does not extend; and the following rules have been enacted for this purpose, in Regulation 2, 1820:—§ 2. "First. The magistrate of Hooghly is hereby declared competent to receive into his custody, natives of India who may be forwarded to him by the superior authorities of Chandernagore and Chinsurah, charged with the commission of murder, robbery, and other crimes of a heinous nature, within the limits of those settlements. Second. After due examination into such cases, the magistrate will either discharge the prisoner,

Preamble to R. 2, 1820.

Section 2. Magistrate of Hooghly empowered to receive into his custody certain persons charged with the perpetration of heinous offences in Chandernagore and Chinsurah. Magistrate how to deal



With such persons.  
 Not to pass sentence of punishment upon them himself.  
 Section 3.  
 Competency of the Calcutta court of circuit and the nizamat adawlut to take cognizance of such cases, and how to pass sentence.  
 Section 4.  
 Period from which the rules contained in this regulation are to have effect.

or if he shall find sufficient grounds for that measure, will commit the accused to take his trial before the court of circuit for the offence with which he may stand charged. *Third.* The magistrate will not himself pass sentence of punishment on the accused, although the nature of the charge may be such as would warrant his doing so under the existing regulations; but will either commit the prisoner to take his trial before the court of circuit, or will discharge him according to the circumstances of the case." § 3. "The court of circuit for the division of Calcutta, and the nizamat adawlut, are hereby respectively empowered to take cognizance of such cases, and to pass such sentence upon the prisoners as may be conformable to the provisions of the regulations which are now, or may hereafter be, in force, within the province of Bengal." § 4. "The foregoing provisions are hereby declared to be applicable to persons charged with having committed offences of the nature described in Clause First, Section 2, of this regulation, in the interval between the restoration of the settlements of Chandernagore and Chinsurah, and the date of this regulation."

## SECTION IV.

### ON THE POLICE.

#### *Police Establishments ; and Duties of Native Officers.*

AT the time of forming the decennial settlement of the land revenue, for the provinces of Bengal, Behar, and Orissa, in the year 1790, the landholders and sudder farmers of land, in conformity with former usage, were bound, by a clause in their engagements, to keep the peace ; and in the event of any robbery being committed in their respective estates, or farms, to produce the robbers, and property plundered. But the general impracticability of enforcing this engagement rendered it of little effect ; and in many instances robberies, and other breaches of the peace, were found to be promoted by collusion between the perpetrators of them, and the police officers entertained by the landholders and farmers of land, in virtue of the clause referred to.<sup>1</sup> With a view therefore to correct this abuse, and to afford more effectual protection to the persons and property of the people, a new system of police was established by Government on the 7th December, 1792 ; the rules of which, with amendments, were re-enacted in Regulation 22, 1793. By Section 2, of this regulation, the police of the country was declared to be under the exclusive charge of the officers who might be appointed to the superintendence of it on the part of Government ; and the landholders and farmers of land, who were before bound to keep up establishments of police officers for the preservation of the peace, were required to discharge them, and prohibited from entertaining such establishments in future. It was further declared by Section 3, that " landholders and farmers of land are not in future to be considered responsible for robberies, committed in their respective estates or farms, unless it shall be proved that they connived at the robbery ; received any part of the property stolen, or plundered ; harboured the offenders ; aided, or refused to give effectual assistance to prevent their

Landholders and farmers of land formerly bound to keep the peace, and answerable for robberies, in Bengal, Behar, and Orissa. This responsibility found of little effect, and consequent reasons for a new system of police, introduced in December, 1792, and established, with amendments, by R. 22, 1793. R. 22, 1793, § 2. Police declared to be under the exclusive charge of officers of Government. Landholders and farmers required to discharge their police establishments, and not to entertain such establishments in future. Section 3. Responsible

<sup>1</sup> This is expressly stated in the preamble to Regulation 22, 1793 ; which declares that the clause referred to " in numerous instances proved the means of multiplying robberies and other disorders, from the collusion which subsisted between the perpetrators of them, and the police officers entertained by the landholders, and farmers of land, in virtue of the clause abovementioned."

of landholders and farmers modified in consequence.

Section 4.  
Zillahs to be divided by the magistrates into police jurisdictions. Their extent, and by whom to be superintended.

Section 6. •  
Jurisdictions to be numbered and named.

Section 6.  
Police darogahs to be nominated by the magistrates; and security to be given by them.  
How far the above original rules are still in force.

R. 22, 1793,  
s. 26, 27.  
Cities of Dacca, Moorshedabad, and Patna, ordered to be divided into wards. Each ward to be superintended by a darogah, subject to the city cutwal. Wards to be numbered and named.

Section 28.  
Rules for nomination of city cutwals, and darogahs.  
L. 13, 1814, § 2.  
Office of city cutwal abolished.

escape ; or omitted to afford every assistance in their power to the officers of Government, for their apprehension ; in either of which cases they will be subject to be prosecuted personally for the crime, or offence, before the court of circuit ; and if convicted, their lands and effects will be liable to be sold, at the discretion of the Governor General in Council, to make good the value of the property stolen, or plundered, to the owner." The zillah magistrates were at the same time required to divide their respective zillahs, including the rent-free lands,<sup>1</sup> into police jurisdictions. Each jurisdiction to be ten coss (twenty miles) square, except where local circumstances might render it advisable to form them of greater or less extent. The guarding of each jurisdiction to be committed to a darogah, or native superintendent, with an establishment of police officers, to be paid by Government. The darogahs, with their establishments, to be stationed in the centre of their respective jurisdictions, unless, for special reasons, it be thought expedient to fix them in any other situation. And the magistrates were instructed to endeavour to form the jurisdictions in such a manner as to bring the principal towns, bazars, and gunges, in the centre of them ; that the police establishments may protect such places, as well as the circumjacent country. The police jurisdictions were ordered to be numbered, and named, after the places at which the darogahs and their establishments might be stationed. And the magistrates were directed not to change the names, or numbers, of the jurisdictions, nor to alter the limits of them, without the sanction of the Governor General in Council. The magistrates were authorized to nominate the darogahs in the first instance ; and to fill up all future vacancies ; under responsibility for selecting persons duly qualified. But no person is to be appointed darogah without giving security for his appearance in the sum of one thousand rupees ; viz. himself five hundred, and two responsible persons two hundred and fifty rupees each. These original rules for the police jurisdictions of the several zillahs in Bengal, Behar, and Orissa, (exclusive of Cuttack) and for the appointment of the police darogahs, are still in force. But further provisions, to prevent the removal of those officers, without proof of incapacity or misconduct to the satisfaction of the Governor General in Council, were altered by the general rules contained in Regulations 5, 1804, and 8, 1809, for the appointment and removal of the native officers of Government in the judicial, revenue, and commercial departments ; which have been cited at length in the second volume of this Analysis.<sup>2</sup> And these again have been superseded, as far as they relate to the appointment or removal of police or jail officers, by the provisions of Regulation 17, 1816, hereafter specified. The magistrates of the cities of Dacca, Moorshedabad, and Patna, were directed by Section 26, Regulation 22, 1793, to divide those cities, and the adjacent places subject to their respective jurisdictions, into wards. Each ward to be guarded by a darogah, with a proper establishment ; and the darogahs to be under the immediate authority of a cutwal. The wards to be numbered and named, and their numbers, names, and limits, not to be changed without the sanction of the Governor General in Council ; as prescribed with respect to the zillah jurisdictions. The rules for the nomination of the zillah darogahs were also declared applicable to the darogahs of wards, and city cutwals ; but the office of cutwal, in the cities abovementioned, was abolished by Regulation 13, 1814, as being found "unnecessary, and in some respects prejudicial to the maintenance of an efficient police in those cities."

<sup>1</sup> *Lakheraj* ; which should be rendered *tax-free*, rather than *rent-free*, as lands of this description are not exempt from rent to the proprietor ; but from the public assessment only.

<sup>2</sup> Pages 153 and 154.

By Regulation 17, 1795, the police of the province of Benares was placed under the joint charge of the tehseeldars, or native collectors of the public revenue, and, subordinately to them, of the landholders and farmers of land, who, by their engagements to Government, were bound to maintain the peace and apprehend all disturbers of it, in their respective estates and farms; as well as to recover, or make good the value of, all property robbed or stolen within their boundaries. The tehseeldar was accordingly declared responsible for robberies or thefts in the first instance; and the landholders and farmers to the tehseeldar; under a provision that for night robberies in open roads or woods, neither the tehseeldar, landholder, or farmer, should be held responsible, unless it be proved that they had such knowledge of circumstances, as might have enabled them to prevent the robbery or theft; but that for thefts or robberies in inhabited places they should be considered liable to responsibility, whether notice of the arrival of the owners of the property stolen, or robbed, have been given to them or not; if, under the circumstances of the case, the magistrate be of opinion that the theft or robbery was committed with their connivance; or that the perpetration of it be ascribable to their want of care or vigilance. The limits of each tehseeldar's revenue jurisdiction, with the lakheraj lands included therein, were to constitute a police jurisdiction: the guarding of which was committed generally to the tehseeldar, and under him, to the landholders and farmers, for their respective limits. At the same time provision was made for the police of the city of Benares, and of the towns of Mirzapore, Ghazeepore, and Jounpore, by the appointment of cutwals, and darogahs of wards, with establishments payable by Government, in the same manner as for the cities of Dacca, Moorsheadabad, and Patna. This system was extended to the ceded provinces, by Regulation 35, 1803, with a provision, that whenever police establishments for cities, large towns, or principal gunges (the charge of which was to be defrayed by Government) should be employed within the jurisdiction of a tehseeldar, they should be considered as fully under his orders, as the police establishments entertained by himself; excepting cities or towns where the magistrates reside, the police officers of which were to be under the exclusive authority of the magistrate. It was further provided, that the whole of the rules of police, relative to tehseeldars, should be equally applicable to huzoory landholders, whose revenue, instead of being collected by a tehseeldar, is paid immediately into the collector's treasury. This last provision was also applied to the huzoory zemindars in the province of Benares by Section 5, of Regulation 7, 1807. And the whole of the rules enacted for the police of the ceded provinces were extended to the conquered provinces in the Doab, and on the right bank of the Jumna, as well as to Bundelcund, by Section 9, Regulation 9, 1804; with a provision that nothing therein contained should be construed to exonerate the zemindars, farmers, or other holders of land, from the duties and responsibility imposed on them by the terms of their existing engagements, or by the ancient and established usages of the country, which may not have been superseded by competent authority, for the prevention of robberies and other disorders, and for the maintenance of peace and good order within their respective limits.

The tehseeldary system of police thus established in the province of Benares, and in the ceded and conquered provinces within the divisions of the Bareilly and Benares courts of circuit, was found inefficient for the purposes intended by it; and open to material objections, as well from a proper establishment of police officers not being maintained by the tehseeldars; and from such as were appointed by them not being sufficiently under the control of the magistrates; as from the frequency of alterations in the extent of their jurisdictions, in consequence of some of the estates composing them becoming

System of police established in the province of Benares, by R. 17, 1795, § 2.

Section 3.

Section 4.

Sections 23, 24, 25.

The same system extended to the ceded provinces by R. 35, 1803, § 2, § 1.

With provision in Section 24, respecting cities, large towns, and principal gunges.

Further provision in Section 26, respecting huzoory landholders paying revenue into the collector's treasury.

R. 7, 1807, § 5.

Applied also to huzoory landholders in Benares, by

R. 7, 1807, § 5.

Rules for police of ceded provinces extended to conquered provinces in the

Doab, and on the right bank of the Jumna as well as to

Bundelcund, by R. 9, 1804

§ 9.

Objections found to the tehseeldary system of police, as stated in the preamble to R. 11

1807.

*huzoory*, under the option given to the landholders to pay their revenue directly into the treasury of the collector. Such estates were, in many instances, too small to admit of a separate police establishment being kept up by the proprietors of them ; and were often intermixed with other estates, either subject to a *tehseeldar*, or paying revenue immediately to the collector. Compact local jurisdictions, which are essential for a good police, were therefore incompatible with such an arrangement ; and could not be obtained without resuming the general charge of the police of the country from the *tehseeldars*, and *huzoory* landholders ; and placing it under officers on the part of Government, subject to the immediate control of the *zillah* and city magistrates : still leaving the duties of the local police to be performed by the landholders and farmers of land, within their respective estates and farms, subordinately to the officers of Government. Such parts of the regulations above cited as declared the police of the province of Benares, or of the ceded and conquered provinces, in the divisions of Bareilly and Benares, to be under charge of the *tehseeldars*, and *huzoory* landholders, or which prescribed their duties as principal officers of police, were accordingly rescinded by Sections 2 and 3, of Regulation 14, 1807 ; and the following rules were established by the succeeding sections of that regulation :—

Sections 2, 3.  
Police rescinded from charge of the *tehseeldars* and *huzoory* landholders.

Section 4.  
And new system established from commencement of Fussyly year '215.

Section 5.  
Zillahs to be divided into compact police jurisdictions.

To be of two descriptions, *sudder* and *mofussil*.

Section 6.  
*Sudder* police jurisdictions, what to comprise.

What to be included in *mofussil* police jurisdictions.

Circumstance to be considered in proposing the *mofussil* jurisdictions. And to station a court

§ 4. "From the commencement of the ensuing Fussyly year 1215, the charge of the police of the country, throughout the whole of the provinces specified in the two preceding sections, shall be vested, subject to the control of the *zillah* and city magistrates, in the officers who may be appointed to the superintendence of it on the part of Government ; and subordinately to them, in the landholders and farmers of land, who, by their engagements, are responsible for the preservation of the peace, within the limits of their respective estates and farms." § 5. "*First*. The several *zillahs*, in the divisions of the Benares and Bareilly courts of circuit, together with the *mehauls* under the magistrate of the city of Benares, shall be divided into compact police jurisdictions ; including, indiscriminately, the estates of *huzoor* *tehseel* landholders, and of *mehauls* paying revenue through a *tehseeldar* ; as well as *lakheraj* lands, of every denomination, held exempt from the public assessment. *Second*. The police jurisdictions shall be of two descriptions. First, such as are established at the station where the *zillah* or city court is held ; and which shall be denominated the "*sudder* police jurisdiction." Secondly, such as are established at any place not being the station where the *zillah* or city court is held ; and which shall be denominated the "*mofussil* police jurisdiction." § 6. "*First*. The *sudder* police jurisdictions shall comprise the city or town, at which the *zillah* or city court is held ; together with such part of the suburbs and environs, as it may be judged expedient to place under the superintendence of a *cutwal*, with an establishment of *darogahs*, *jemadars*, *burkundazes*, and *chokeedars*, or other watchmen, proportionate to the extent and population of the jurisdiction. *Second*. The *mofussil* police jurisdictions shall respectively comprise a considerable town or *gunge*, at which the superintendent of the jurisdiction shall be stationed ; together with such part of the adjacent country, as it may be deemed advisable to place under the superintendence of a *darogah*, with an establishment of *jemadars*, *burkundazes*, and *chokeedars*, or other watchmen, proportionate to the extent and population of each jurisdiction. *Third*. In proposing a distribution of *mofussil* police jurisdictions, and the requisite establishments for them, the magistrates are to attend as much to the population, and number of towns, villages, and other inhabited places, as to the extent of country ; but the latter shall, in no instance, exceed ten *cos* square, for any one police jurisdiction ; unless peculiar local circumstances shall appear to require it, in which case they are to be reported, through the court of *nizamut adawlut*,

for the consideration of Government." *Fourth.* If the principal town or gunge, included in any mofussil police jurisdiction, shall, from its extent and population, appear to require a cutwalee establishment; or if it appear expedient, in any instance, to include more than one considerable town or gunge within a mofussil police jurisdiction, and to station a naib darogah, or a jemadar, with a subordinate establishment of burkundazes, chokeedars, or other watchmen, at the town or gunge, which may not be the station of the darogah of the jurisdiction; the magistrates shall propose such arrangement, through the court of nizamat adawlut, for the orders of the Governor General in Council."

§ 7. "*First.* The police jurisdictions of the several zillahs, as well as those under the magistrate of the city of Benares, shall be numbered; and named after the places at which the superintending officers are stationed. The magistrates shall, as soon as possible after the receipt of this regulation, submit a statement of police jurisdictions, formed according to the provisions of it, together with a statement of the requisite police establishments for each jurisdiction, through the courts of circuit, to the court of nizamat adawlut; and after obtaining the approbation of the Governor General in Council thereto, the names, numbers, limits, or establishments, of the several jurisdictions, shall not be changed without the previous sanction of Government."

*Second.* Provided, that it shall be, at all times, competent to the Governor General in Council to order the discontinuance of any police jurisdiction, or establishment, which may appear to him unnecessary; or any alteration therein, which he may deem expedient."

§ 8. "*First.* The magistrates shall nominate the cutwals, and police darogahs, through the court of nizamat adawlut, for the approbation of the Governor General in Council. They will in consequence be held responsible for selecting persons duly qualified; and are required, in every instance, to report to the nizamat adawlut, any information obtained by them respecting the past employments, character, and qualifications, of the persons proposed by them." *Second.* The cutwals of the city of Benares, and town of Mirzapore, are already required, by Section 25, Regulation 17, 1795, to give security for their appearance, in the sum of five thousand rupees; namely, the cutwal himself in two thousand five hundred, and two responsible persons in one thousand two hundred and fifty each. The cutwal of the town of Juanpore is required, by the same section, to give security in half the above amount. It is further hereby provided, that no person shall be appointed cutwal of the cities of Allahabad, Agra, Furruckabad, or Bareilly, unless he shall have given security for his appearance in the sum of five thousand rupees; viz. himself in two thousand five hundred, and two responsible persons in one thousand two hundred and fifty each. The cutwals appointed to any other stations under this regulation shall previously give security for their appearance in the sum of two thousand five hundred rupees; namely the cutwal himself in one thousand two

Provision for any requisite cutwalee establishment, and subordinate police establishment, in mofussil jurisdictions.

Section 7. Police jurisdictions to be numbered and named. Statements to be submitted by magistrates on receipt of this regulation.

Power reserved to Government of discontinuing or altering any police jurisdiction or establishment. Section 25, c. 1. Cutwals and darogahs to whom to be nominated.

Clause 2. Security to be given by cutwals.

<sup>1</sup> In modification of this, and the following section, the magistrates are authorized, by the first clause of Section 8, R. 17, 1816, "to exercise the power of stationing any portion of their police thannah establishments, (not exceeding one third of the entire establishment) at any chokee, village, ghaut, highway, or other place within the limits of the thannah to which such establishments may appertain; reporting always the particulars, as well as the grounds of the arrangement, for the information of the superintendent of police of the division." The second, third, and fourth clauses of the same section, respecting the duties of officers stationed at outposts, correspond *verbatim* with the second, third, and fourth clauses of Section 6, R. 20, 1817, hereafter cited at length.

<sup>2</sup> This clause is superseded by Section 7, Regulation 17, 1816, hereafter cited; which empowers the magistrates to appoint and remove cutwals, darogahs, and other police officers, without reference to the nizamat adawlut; or court of circuit.

Clause 3. And by police darogahs. Clauses 4 and 5. Form of declaration to be subscribed by cutwals and police darogahs. And form of sunnud to be granted to them.

R.14, 1807, §11. Rules of police for sudder jurisdictions of zillahs in Bareilly and Benares divisions contained in R.14, 1804, §11, which comprises also the rules in R. 22, 1793, for cities of Dacca, Moorshedabad and Patna. But under provision in R. 20, 1817, § 34, the rules for police darogahs in that regulation will be first stated.

Preamble to Regulation 20, 1817.

hundred and fifty rupees, and two responsible persons in an equal amount. *Third.* The several police darogahs, who may be appointed under this regulation, shall give security for their appearance in the sum of one thousand rupees; namely, the darogah himself in five hundred, and two responsible persons in two hundred and fifty each." The fourth and fifth clauses, of the same section, prescribe a form of declaration to be subscribed by every cutwal and police darogah, previously to entering upon the execution of the duties of his office; and a form of sunnud to be granted to them by the magistrate.<sup>1</sup>

Section 11, of Regulation 14, 1807, contains the rules of police enacted for the sudder jurisdictions of the several zillahs within the divisions of Bareilly and Benares; and comprises, with some additions and modifications, the rules contained in Regulation 22, 1793, for the police of the cities of Dacca, Moorshedabad, and Patna. But it is directed in the concluding Section of Regulation 20, 1817, that "the cutwals and other police officers appointed in the cities and towns, shall be guided, in their discharge of the general duties of the police, by the rules prescribed in this Regulation, for the guidance of the darogahs of police, as far as the same may be applicable." It therefore appears proper to state in the first instance the whole of the rules contained in Regulation 20, 1817, (already more than once adverted to) which is entitled "A Regulation for reducing into one regulation, with amendments and modifications, the several rules which have been passed for the guidance of darogahs and other subordinate officers of police; for modifying the existing rules concerning the resistance or evasion of criminal process, and for requiring further aid to the police, in certain cases, from proprietors and farmers of land, and their local managers, as well as from the munduls and other heads of villages."

The preamble to this very useful regulation, (which might be designated *The Police Officer's Manual*, in the provinces subject to the presidency of

<sup>1</sup> The following are the forms here referred to; and as no distinct forms have been prescribed for the police officers of the lower provinces, these may be considered applicable, under Section 3, Regulation 20, 1817, (hereafter cited) to the whole of the police officers appointed, or employed, under the provisions of that regulation:—

#### *Form of Declaration.*

"I, \_\_\_\_\_, appointed cutwal of the city (or town) of \_\_\_\_\_, (or darogah of the ward, or police jurisdiction of \_\_\_\_\_), solemnly declare, that I will execute the duties of that office, to the best of my abilities, with diligence, impartiality, and integrity; according to the regulations enacted, or which may be hereafter enacted, for my guidance; that I will not, directly or indirectly, receive, or knowingly allow any other person to receive any fee, reward, or emolument whatsoever, on account of any matter relating to the exercise of my functions as cutwal (or darogah), and that I will, in all respects, faithfully discharge the trust reposed in me."

#### *Form of Sunnud.*

"Be it known to \_\_\_\_\_, inhabitant of \_\_\_\_\_, in virtue of the powers vested in me, by Regulation 14, 1807, I hereby appoint you cutwal of the city (or town) of \_\_\_\_\_, (or darogah of the ward, or police jurisdiction, of \_\_\_\_\_), within the limits specified at the foot of this sunnud. You are accordingly authorized and directed to perform the duties of the said office, in conformity with the provisions of that regulation; or of any other regulation in force, which has been, or may be enacted by the Honorable the Governor General in Council; and which shall have been printed and published in the prescribed form. You are further required to obey all orders, consistent with the regulations, which may be issued to you by the magistrate of the zillah (or city) in which you are employed. And are to discharge the trust reposed in you, faithfully and diligently, until this sunnud shall be recalled; when it is to be delivered back to the office of the magistrate. Herein fail not. Dated \_\_\_\_\_ A. C. \_\_\_\_\_ corresponding with \_\_\_\_\_."

Fort William) is as follows—"Whereas it is desirable, that the several rules which have, from time to time, been enacted respecting the duties of the darogahs and other subordinate officers of police, should be revised; and that such provisions as may be necessary should be framed into one regulation, for the better information and guidance of those officers; and whereas it is expedient that the rules at present in force, regarding the resistance or evasion of criminal process, should be modified; that the proprietors and farmers of land, and their local managers, and the munduls, putwarries, and other heads of villages, should be declared responsible for reporting unnatural or suspicious deaths, and for affording due information to the police, whenever any individual of suspected conduct, released from the criminal jail, may resort to dishonest means of livelihood; also that they should be declared liable to penalties for neglecting to afford due aid in supporting the processes of the magistrates, and darogahs of police; and that further provision should be made for transmitting the thannah reports, and other papers to and from the magistrate's court where there may not be any public dawks; the following rules have been enacted, to be enforced on their promulgation throughout the provinces subject to the presidency of Fort William."

### *Provisions of Regulations rescinded.*

§ 2. "First. Sections 7, 8, 9, 11, 12, 13, 14, 15, 17, 18, 19, and 21, of Regulation 22, 1793; the seventh clause of Section 20, Regulation 29, 1793; the seventh clause of Section 10, Regulation 31, 1793; Sections 7, 8, 9, 11, 12, 13, 14, 16, 17, 18, and 19, of Regulation 17, 1795; Section 9, of Regulation 4, 1797; Section 6, of Regulation 4, 1798; the third clause of Section 11, Regulation 6, 1801; Section 7, Regulation 32, 1803; Sections 7, 8, 9, 11, 12, 13, 14, 15, 17, 18, 19, 20, and 25, of Regulation 35, 1803; the seventh clause of Section 10, Regulation 37, 1803; Sections 5, and 6, of Regulation 41, 1803; Sections 12, 13, 15, 16, 17, and 18, of Regulation 9, 1807; Sections 9, and 12, of Regulation 14, 1807; Sections 6, and 7, of Regulation 17, 1810; and Sections 2, and 7, of Regulation 7, 1811, are hereby rescinded. *Section 2. Former regulations rescinded.* Second. So much of Sections 10, and 16, Regulation 22, 1793; Sections 10, and 15, Regulation 17, 1795; Section 9, Regulation 7, 1799; Section 3, Regulation 4, 1800; Sections 10, and 16, Regulation 35, 1803; Section 14, Regulation 9, 1807; and Section 11, Regulation 1, 1811; as respects the police darogahs, or other subordinate officers of the police, is also rescinded. *Parts of former regulations rescinded.*"

### *Appointment and removal of Police Officers.*

§ 3. "First. By the provisions of Regulation 17, 1816, the zillah and city magistrates (and in certain cases, the superintendents of police) are vested with the power of appointing the cutwals, darogahs, and other subordinate officers of the police, of removing them from one station to another, and of suspending and dismissing them from office in consequence of neglect, misconduct, or incapacity. *Section 3. Appointment and removal of police officers vested.* Second. Such part of Section 12, Regulation 5,

<sup>1</sup> The provisions of Regulation 17, 1816, which are here referred to, are contained in the following sections of that regulation. § 6. "Such parts of the rules contained in Regulation 8, 1809, as relate to the appointment or removal of cutwals, darogahs, and other police or jail officers, are hereby rescinded; and the rules contained in Sections 11 and 12, Regulation 16, 1810,<sup>1</sup> are declared subject to the following modifications and provisions."



police officers,  
except when  
specially di-  
rected.

1804,<sup>1</sup> as relates to the nomination and removal of naibs, jemadars, and burkundazes, acting under cutwals, and darogahs, is hereby rescinded; nor

§ 7. "*First.* The magistrates of the zillahs and cities, shall hereafter exercise the power of appointing cutwals, and darogahs, and other subordinate officers, to the several police stations, subject to their control; of removing them from one station to another; of suspending and of dismissing them from office, in consequence of neglect, misconduct, or incapacity; and it shall not be considered necessary to report the nomination, appointment, removal, suspension, or dismissal of such police officers to the courts of circuit, with the view of obtaining the sanction of those courts. *Second.* The zillah or city magistrates are likewise empowered to appoint fit persons to the situation of jailors, and other subordinate officers of their criminal jails; and to remove such officers for misconduct, incapacity, or other sufficient cause, without reference to other authority." *Third.* The zillah and city magistrates are hereby required to record, upon their proceedings, the grounds upon which any native officers may be removed by them, under the provisions of this regulation, and to select proper persons to fill all vacancies in the situations of such officers, and to continue in office the persons appointed, whether by themselves or by their predecessors, whilst they discharge the duties assigned to them with diligence and integrity. *Fourth.* The zillah and city magistrates shall submit to the judge of circuit, for his information at the period of sessions, a list of all persons whom they may have appointed to the offices of cutwal, police darogah or jailor, since the period of the preceding sessions, specifying their names, ages, past employments, characters, and qualifications. *Fifth.* In the event of any officer, of the descriptions noticed in the preceding clause, deeming himself aggrieved by any order passed by a zillah or city magistrate with respect to his dismissal from office, he shall be at liberty to present a petition, at the ensuing sessions, to the judge of circuit holding the jail delivery at the station, setting forth the circumstances of his case, and grounds of complaint; but the receipt of petitions of this nature shall be restricted to the period of the sessions immediately ensuing after the order of dismissal shall have been passed, unless it shall be proved that the petitioner was prevented by circumstances totally beyond his control, from presenting his petition within the prescribed period. *Sixth.* On perusal of a petition of the description specified in the preceding clause, the judge of circuit, if he deem proper, may require the magistrate to submit the proceedings holden on the case for his inspection, accompanied by any explanation, in the English language, which the magistrate may be desirous to offer. *Seventh.* After consideration of the papers furnished, should the judge of circuit be of opinion that the powers vested in the magistrate by the preceding clauses of this section have been perverted, he shall submit the proceedings to the court of nizamat adawlut, as in other cases wherein the courts of circuit are required to report any misconduct on the part of the magistrates; and the court of nizamat adawlut shall proceed thereupon, in conformity with the provisions contained in Section 14, Regulation 2, 1801, and Section 24, Regulation 8, 1803; and in cases in which they may deem it necessary, the court of nizamat adawlut shall direct the magistrate to restore to office any individual whom he may have removed without adequate or reasonable grounds. *Eighth.* Nothing contained in the foregoing clauses of this section shall be construed to preclude the courts of circuit, or the court of nizamat adawlut, from ordering the removal of any of the police or jail officers, who may be convicted of a criminal offence declared punishable by dismissal from office, or, though not so expressly declared, if the conduct of such native officer appear, from any proceeding before a court of circuit or the court of nizamat adawlut, to be such as to require his removal from the public situation held by him."

§ 9. "*First.* All deaths, resignations, removals, or appointments in the office of a cutwal or darogah of police, shall be communicated by the magistrates to the superintendents of police, in such form as the superintendents may deem convenient and proper; in order, not only that the registers of police establishments may be kept correct, but, that any cutwal or police darogah, who may have been dismissed from his office, on conviction, before the court of circuit or nizamat adawlut, of corruption or of any other criminal offence declared to be punishable by dismissal from office, may be precluded from being again employed in any similar situation elsewhere.

<sup>1</sup> See vol. ii. page 153.

shall the cutwals or darogahs nominate individuals to supply vacancies in their subordinate establishments, except in instances in which they may be especially directed to do so by the magistrate. *Third.* The magistrate will furnish to each police officer, on his appointment, a written document under his official seal and signature, specifying the station to which the officer is appointed, and requiring him to perform the duties of it, in conformity with the regulations.

Summed to be furnished by magistrates to police officers on their appointment

*Relative rank and general functions of Officers on the Thannah Establishments.*

§ 4. "*First.* The darogahs of police shall exercise a general control over the mohurirs, jemadars, and burkundazes attached to their respective thannahs. It shall be the duty of a darogah, or other officer of police in charge of a thannah, to conform to all instructions he may receive from the magistrate, to whom he may be subordinate; to preserve the peace within the limits of his jurisdiction; to report to the magistrate all occurrences connected with the police, which may come to his knowledge; to prevent, as far as possible, the commission of all criminal offences; to discover and apprehend offenders; to execute process and obey all orders transmitted to him by the magistrate; and to perform such other services as are prescribed in the regulations. *Second.* The mohurir shall be considered the second officer at a thannah, and in the absence of the darogah from his station shall exercise the powers vested in that officer by the provisions of this regulation. It shall be the special duty of the mohurir to preserve the records of the thannah, and to write the reports and other papers under the direction of the darogah. *Third.* The jemadar shall be considered as the third officer at a thannah, and in the absence of the darogah and mohurir from the thannah station, shall exercise the same powers as are vested in the darogahs of police by the provisions of this regulation. The police jemadars, whether stationed at the thannahs, or at out-posts, shall act under the orders of the darogah of the division, and shall see that the burkundazes are in attendance at their posts; that their arms and accoutrements are kept in a state of efficiency; and that all prisoners and property brought to the thannah are duly guarded during the time they may remain under the custody of the police burkundazes attached to the station. *Fourth.* The officers of police, in pursuance of Sections 6, and 7, Regulation 10, 1808; Sections 8, 11, and 12, Regulation 16, 1810; and Section 11, Regulation 17, 1816; are required to aid and support the superintendents of police, and the joint and assistant magistrates, to whom they may be respectively subordinate, in the execution of any process issued by them under their official seals and signatures; also to furnish the superintendents of police, and the joint and assistant magistrates, with every information required from them, as well as generally to obey all orders issued to them

Section 4 General duties of darogahs and then control over the subordinate thannah officers.

Rank and special duties of the mohurir

Rank and special duties of the jemadar.

Police officers generally to obey the orders of the superintendents of police, and joint and assistant magistrates.

*Second.* If any case of this nature should come under the observation of the superintendents of police, it will be their duty to communicate the requisite information to the zillah or city magistrate, in order that the cutwal, darogah, or other police officer who may have been appointed, under the circumstances described in the latter part of the preceding clause, may be immediately removed from his situation. *Third.* It is hereby expressly declared, that the removal of a police officer, or of any officer on the jail establishment of a magistrate, shall not be considered to preclude the future employment of such person in any other situation in the public service, for which he may be deemed duly qualified, except in the cases of conviction described in the first clause of this section.

by the superintendents of police, and by the joint or assistant magistrates ; on pain, in case of neglect or failure, of being fined, suspended, or dismissed from office, under the authority, or at the representation of the superintendent of police, or joint or assistant magistrate, according to the provisions established by the general regulations for the punishment of offences of that description."

*Rules regarding the use of a Seal of Office at each Thannah, and the Badges, Arms, and Accoutrements, of the Police Burkundazes.*

Section 5.  
Cutwals and police darogahs to use a seal of office. Its description. Burkundazes to wear a certain badge, its description. Their arms and uniform.

§ 5. "*First.* All cutwals and police darogahs shall henceforward use a brass seal of office, an inch in diameter, and made after the form described in the margin, the name of the cutwalee or thannah, and the name of the city or zillah in which it may be included, being engraved on the surface of the seal. *Second.* The police burkundazes shall wear brass badges, engraved with the name of the police station, and of the district in which they may be employed ; and shall be armed with a spear, and a sword and shield ; or with a matchlock, sword and shield, or with a spear and matchlock, as circumstances may render expedient ; they shall also be uniformly dressed in such manner as may be prescribed by the court of nizamat adawlut through the superintendent of the police."

*Powers and duties of Police Officers employed at out-posts.*

Section 6.  
Police officers stationed at out-posts how to be guided. Officers so stationed to perform their prescribed duties under the control of the darogah.

§ 6. "*First.* Police officers stationed, with the sanction of the zillah or city magistrate, at any chokee, village, ghaut, highway, or other place within the limits of a thannah, in pursuance of Section 8, Regulation 17, 1816, shall be guided by the following rules as prescribed in that section. *Second.* Jemadars, burkundazes, and other police officers stationed at out-posts, or subordinate chokees, shall act under the control of the darogah or head police officer of the thannah, to which they may be attached ; and shall afford their aid for the prevention of crimes, the apprehension of criminals, and generally for the preservation of the peace ; and shall report to the thannah all occurrences relating to matters of police, which may come to their knowledge. *Third.* The officers of police stationed at out-posts shall be competent to apprehend, without a written charge or warrant, persons found in the act of committing a breach of the peace, or against whom a hue and cry shall have been raised, or who shall be detected with stolen goods in their possession, or who may be liable to apprehension, under the rules in force, as proclaimed, or notorious robbers, or vagrants, without any ostensible means of subsistence ; but no person shall be arrested by the subordinate officers of police, except in cases of the nature above noticed, unless under the special warrant of the magistrate, or of the darogah of the thannah to which the out-post may be attached. *Fourth.* Persons apprehended by the subordinate establishments of police shall be forwarded immediately to the thannah to which the out-post may belong, accompanied by an explanation of the circumstances of the case, and of the causes which may have led to the apprehension of the prisoner."

They may apprehend certain description of criminals without a warrant from magistrate or darogah.

Persons so apprehended to be forwarded immediately to the thannah, with a report on the case.

*Rules regarding the application of Police Officers for leave of absence, and the deputation of Burkundazes to the sudder station.*

§ 7. "First. Any police darogah, mohurir, or jemadar, applying for leave of absence, shall name an individual for the approval of the magistrate, to officiate for him during his absence, and the person who may be appointed to act, shall receive, during his absence, the entire allowances of the police officer for whom he may officiate, or such part thereof as the magistrate shall in each instance, judge it proper to fix. The burkundazes shall submit their applications to the magistrate through the darogahs; and the persons nominated to act during their absence, shall receive the entire salaries of the individuals for whom they may officiate, or such part thereof as may be fixed by the magistrate. In the event of the absentee's exceeding the period of his leave, the darogah shall report the circumstance for the orders of the magistrate. *Second.* Whenever a burkundaz may be dispatched to the magistrate's court, the jemadar, or other police officer, by whom he may be dispatched, shall deliver to him a certificate, showing the name of the burkundaz, and the date and time of his dispatch, agreeably to the first three columns of the form No. 1, of the appendix. *Third.* On the arrival of the burkundaz at the sudder station, he shall proceed to the nazir of the foudarry court, who will insert, in the fourth column of the paper, the date and hour of his arrival, and in the event of any unnecessary delay appearing on comparing the date of his dispatch from the thannah with that of his arrival at the sudder station, will report the circumstance to the magistrate. *Fourth.* On the departure of the burkundaz from the sudder station, he shall again proceed to the foudarry nazir, who will note, in the fifth column, the date and time of his departure, and on his arrival at the thannah station, the certificate shall be delivered up to the darogah, mohurir, or jemadar, who, in the event of the burkundaz having loitered on the road, will report the particulars for the orders of the magistrate."

Section 7  
Appointments  
and salaries of  
persons officiating for  
police officers  
how to be regulated.

Burkundazes  
dispatched to  
magistrate's  
court shall be  
provided with  
a certificate  
Which is to be  
presented to  
the nazir, who  
shall report  
any delay

Burkundazes  
how to proceed  
on leaving the  
sudder station

FORM No. 1.

*Certificate of Dispatch.*

Name of the Burkundaz	Case	Date and time of dispatch from the Thannah	Date and time of arrival at the Magistrate's Court	Date and time of departure from the Magistrate's Court	Remarks
Motee Sing	Murder, Motee Ram, vs. Nuttoo and others	10th March, at the fifth hour of the day	12th March at the third hour of the day	13th March, at the fifth hour of the day	

*Records to be kept and preserved at the Thannah.*

Section 8.  
Police darogahs and mohurirs carefully to preserve and to promulgate all regulations of Government sent to their thannahs.  
Rules for the care, preservation, and inspection of the thannah books and registers.

Darogahs to be furnished with blank books for diaries.

In these every occurrence to be entered.

What circumstances to be entered when prisoners are apprehended. The purport of every petition, &c. to be entered.  
Penalty for darogah's wilful omission or misrepresentation of any official act.

Entries how to be attested.

Rules for furnishing new diary books, when required. A book to be kept, containing copies of reports, returns, &c. to be kept containing copies of warrants, orders, &c.

§ 8. "*First.* The police darogahs and mohurirs are enjoined to bind up separately from all other records, and to preserve with care, the several regulations of Government, which may be sent to their respective thannahs; and they shall also cause the same to be publicly read for general information, and shall take every favorable occasion of promulgating the rules therein contained. *Second.* The books and registers alluded to in the following clauses of this section shall be kept up with regularity at the several police thannahs; and darogahs and mohurirs, on their appointment to police stations, are required to inspect the records, and to report to the magistrates on the general state of the thannah papers, within ten days after receiving charge. Every police darogah, or thannah mohurir, receiving charge of the records of a police station, shall sign a list of the records delivered over to him, which shall also be signed by the officer delivering over charge; and the list so authenticated by their joint signatures shall be transmitted to the magistrate. An exact counterpart, authenticated in the same manner, shall also be kept at the thannah. The magistrates and their assistants, and the joint magistrates, who may occasionally visit the thannahs, shall avail themselves of any opportunities that may offer to inspect the records, and in the event of their being found deficient, or of any gross neglect in the care of them, the police darogah and mohurir, who may appear culpable, will be liable to dismissal, or to a fine, according to the circumstances of the case. *Third.* The police darogahs shall severally be furnished with blank books for diaries; each book containing 100 pages, to be signed and numbered by the magistrate's assistant, if on the spot, or, in his absence, by the serishtadar, or other head ministerial officer of the magistrate's court. *Fourth.* Every occurrence which may be brought to the knowledge of the officers of police, shall be entered in the thannah diary, on the day on which the event may be communicated to the thannah, and if no incident shall be communicated, it shall be so noted in the diary. *Fifth.* The darogahs shall enter in their diaries the names of all persons whom they may apprehend, the crime or misdemeanor with which they may be charged, the date of their apprehension, and the date on which they may be dispatched to the magistrate. *Sixth.* The purport of every petition, representation, complaint, or information, presented to any officer of police, shall be recorded in the diary of the thannah, whether the same may be cognizable by the native officers of police, or otherwise; and if it be proved, that a darogah has apprehended any persons, or issued orders, or done any official act, which he may not have inserted and truly stated in his diary, or that any occurrences have been wilfully omitted, he shall be punished with dismissal from office, or by such other penalty, as the circumstances of the case may appear, under the general regulations, to require. *Seventh.* Every entry made in the diary shall be attested by the signature of the individual by whom it may be recorded. *Eighth.* The darogah, or other officer of police, presiding at the thannah, shall be careful to report to the magistrate, at least a month before their diary books are likely to be written through, in order that fresh blank books may be furnished to the thannah, without delay, and those diary books which may be completed shall be deposited in the records of the thannah. *Ninth.* A book shall be kept, containing copies of all urzees, kyfeuts, reports, and returns, made by the officers of the thannah establishments to the magistrate's court. *Tenth.* A book shall be kept, containing copies of all perwannahs, and orders of every description, received from the magistrate's court. *Eleventh.* A book shall be kept, containing copies of all chelauns or dispatches of prisoners, and property, forwarded to

the magistrate's court, drawn out agreeably to the forms Nos. 2 and 3, of the appendix.' *Twelfth.* An abstract register shall be kept of robberies and

A book to be kept, containing copies of register of heinous offences.

## FORM No. 2.

*Chelan or Dispatch of Prisoners for the Thannah of*

*Sillah of*

No. of the Chelan.	Name and residence of the complainant or prosecutor.	Names of the prisoners, and their place of residence; also the name of the pergunnah, and of the landholder or farmer.	Abstract of the offence and the date of its occurrence, and also the date of the urzee, complaint, or information.	Date and time of the apprehension of the accused.	Where apprehended and by whom.	Date and time of the arrival of the accused at the thannah.	Date and time of his dispatch to the sub-district station, and under charge of what bukundaz.	Name of the witnesses.	Remarks.
1.	Ramdial, inhabitant of Mouza Serai Akel.	1. Jeesook, inhabitant of Mouza Jannsut, pergunnah Dulmow, in the estate of Ramsing zemindar. 2. Matah, inhabitant of Mouza Paharee zemindar, and pergunnah as above.	Burglary and wounding on the 5th of April, 1816. Complaint made on the 6th of April.	On the morning of the 15th of April.	By Nuttoo, chokeedar, in the village of Jaunseet.	On the evening of the 15th of April.	On the evening of the 16th of April, under the custody of Ramsing and Motee Sing, Bukundazes.	Bood Sing Kaorah Rutnah Khodabuksh.	

## FORM No. 3.

*Chelan or Dispatch of Property*  
*Thannah of* in the District of  
*List of Property found in the house of*  
*the Foujdarry Court, under charge of*  
*corresponding with*

*and dispatched to*  
*on the*

No. of the Chelan	Name or description of the article	Weight	Estimated Value.	In what place found	Date and time of finding.	Name and residence of the witnesses in whose presence the property was found	Name of the person on whom or in whose premises the property may be found	Abstract particulars, stating what property is claimed as plundered or stolen, and what is deemed suspicious

A book to be kept, containing copies of lists of stolen property.  
 A book to be kept, containing copies of proclaimed offenders.  
 A book to be kept, containing a list of villages within the thannah.

other heinous offences, ascertained to have been committed within the jurisdiction of the thannah, in each month, drawn out after the form No. 4, of the appendix.<sup>1</sup> *Thirteenth.* A book shall be kept, containing copies of all lists of stolen property delivered into the thannah by prosecutors or others. *Fourteenth.* A register shall be kept, according to the form No. 5, of the appendix,<sup>2</sup> of offenders who may have been proclaimed, or may have broken jail, or have otherwise eluded the pursuit of justice; and for whose apprehension orders may have been received at the thannah from the magistrate's court. *Fifteenth.* A list shall be kept of the names of the villages comprised within the limits of the thannah, showing the names of the proprietors and of the village watchmen, agreeably to the form No. 6, of the appendix."<sup>3</sup>

<sup>1</sup> FORM NO. 4.

*Statement of Crimes of a heinous nature, ascertained to have been committed or attempted within the limits of the thannah of during the month of*

No.	CRIMES.	Committed.	Attempted.	Number of offenders concerned.	Number apprehended.	Remarks.
1.	Dacoitee, attended with murder - -					
2.	Ditto, ditto, with wounding - -					
3.	Simple dacoitee - - - -					
4.	River dacoitee - - - -					
5.	Wilful murder - - - -					
6.	Maihem, or malicious wounding -					
7.	Highway robbery by footpads, attended with murder, wounding, or other circumstances of aggravation - -					
8.	Simple highway robbery by footpads -					
9.	Highway robbery by horsemen -					
10.	Cattle stealing - - - -					
11.	Homicide - - - -					
12.	Affrays and riots of a serious nature -					
13.	Burglary, attended with murder or wounding, or other circumstances of aggravation - - - -					
14.	Simple burglary - - - -					
15.	Thefts, exceeding 10 rupees - -					
16.	Ditto, under 10 rupees - - -					
17.	Thangee daree - - - -					
18.	Arson - - - -					
19.	Counterfeiting the coin, or uttering base coin - - - -					
20.	Suicide - - - -					

N. B. The number of accidental deaths, whether occasioned by falling into rivers, lakes, or wells; by wild beasts, venomous animals, or other causes; also any considerable mortality, whether proceeding from famine, or other cause; and extraordinary events, which may be brought to the knowledge of the police officers during the month, shall be noticed at the foot of this statement.

Vide Form on the annexed page.

Ibid

*Rules regarding returns, reports, and statements, to be sent to the magistrates, or to the superintendents of police.*

§ 9. " *First.* An extract from the thannah diary, in lieu of the buhee silahut at present in use, and from the abstract register of robberies, and other heinous offences, No. 4, above prescribed, containing the entries made during the month, shall be prepared verbatim, and transmitted to the office of the magistrate, on or before the 5th of every ensuing month. *Second.* Together with the monthly reports to be transmitted to the magistrate as above directed; the darogahs of police shall forward, under their official signature, and in

Section 9.  
What abstracts and documents shall in future be transmitted to the magistrate.  
A list of the thannah officers entitled to pay, to be sent

[Forms referred to on the opposite page.]

<sup>2</sup> FORM NO. 5.

*Register of offenders, who have escaped from jail, or for the apprehension of whom proclamations may have been issued, under the provisions of Regulation 9, 1808, or who, being charged or suspected of the commission of specific crimes of a heinous nature, may have eluded the pursuits of justice, and for whose apprehension process may have been issued from the magistrate's court.*

Name and cast of the person, with a specification whether he may have escaped from jail, or may have been proclaimed, accused, or suspected.	Name of the father.	Supposed age of the offender.	Description of his person.	Supposed usual place of his residence.	Amount of Reward offered for his apprehension.	Date of the magistrate's order for the apprehension of the offender.	Date of proclamation.	Date of apprehension, surrender, or ascertained death.

<sup>3</sup> FORM NO. 6.

*Register of Village Watchmen and alphabetical list of Villages.*

Names of villages.	Distance and direction from the thannah station.	Names of the proprietors or managers, and situated in what pergunnah.	Names of the chokeedars or watchmen attached to each village.	Estimated number of houses in each village.	Remarks.



charge of a burkundaz, a list of the police officers on the thannah establishment, entitled to receive pay from Government for the past month, after the form No. 7, of the appendix.' This list, the burkundaz will deliver to the treasurer of the foudjarry court, on his receiving the pay of the thannah establishment; which shall forthwith be conveyed to the darogah, or other police officer in charge of the thannah, who will pay the amount due to the several individuals of the establishment, and transmit their receipts with his own, in a paper, corresponding in substance with the form abovementioned, to remain with the records of the magistrate's court. *Third.* In preparing the abstract monthly statements of heinous offences according to the form No. 4, of the appendix, the darogahs shall pay strict attention to the following rules. *Fourth.* The darogahs shall, as far as may be in their power, distinguish wilful and malicious murder (*kul-i-umd*) from every other species of homicide, reporting all cases of murder not accompanied with robbery or burglary, under the 5th head, and cases of homicide of every other description, excepting homicide in affrays, under the 11th head of the statement. *Fifth.* Under the 6th head the darogahs shall insert all cases of wounding, or violent corporal injury inflicted maliciously, and not in the prosecution of robbery or burglary, or during an affray. *Sixth.* Under the 12th head of the statement all affrays and riots shall be entered, in which any considerable number of persons may have been concerned, or in which any person may have been killed or wounded, and the public peace may have been disturbed; but it shall not be necessary to include in this column cases of assault and battery, or drunken broils, in which only a few individuals may have disputed, and no very serious personal injury may have been sustained. *Seventh.* Under the 13th and 14th heads of the statement, all cases shall be entered, in which any person may enter or attempt to enter by day or by night, by breaking any dwelling-house, warehouse, storehouse, or other building, or place used for the custody and preservation of property, whether the same be constructed of stone, brick, mud, bamboo, grass, or other materials, or into a tent, boat, or other place of habitation, whether such entry be effected by cutting through or under the wall, or by forcibly raising the roof of the house, or by any other means attended with breaking, and whether in pursuance of the intent to commit such robbery, any property shall be carried away or otherwise. *Eighth.* Under the 17th head all cases shall be entered of receiving, vending, or concealing, or melting down, stolen property. *Ninth.* The 18th head of the statement shall include only those cases of arson, in which any habitation or other property may appear to have been purposely and maliciously fired, and the darogah shall not include accidental fires under this head. *Tenth.* Under the concluding or 20th head of the statement, the darogah shall insert all cases in which the person

<sup>1</sup> FORM No. 7.

*Last of the Police Establishment of the Thannah of* \_\_\_\_\_, *for the Month of* \_\_\_\_\_

Number.	Name of each Person	Date of Discharge	Absent on leave from what date	Amount of Salary due

destroyed may appear to have been the immediate and voluntary cause of his own death. *Eleventh.* The darogahs shall report in the statement above prescribed, all heinous offences which may come to their knowledge, whether the offenders may be apprehended or otherwise, and shall distinguish, in the third column, all attempts in which the criminal intent may have failed; inserting in the 2d column, only those cases in which the crime may have been actually perpetrated. *Twelfth.* A monthly report of crimes and offences agreeably to the form No. 4, of the appendix, shall be transmitted by the police darogahs, from each police thannah, to the office of the superintendent of police for the division, on or before the 5th of the ensuing month. *Thirteenth.* The reports and returns submitted by the police officers to the magistrates, shall be written in a clear and legible hand, and shall bear at the foot of the writing the date of the dispatch, according to the era current in the district, and the signature of the police officer by whom the report may be made, and, when the circumstances may admit, the seat of the thannah; all examinations taken and proceedings held by the police officers, shall be superscribed with the date and month of the era current in their several jurisdictions. *Fourteenth.* The papers transmitted by the police officers to the foudarry court shall be strung on a thread, the ends of which shall be secured with wax, and the record of each case shall be made up in a separate envelope, and addressed to the magistrate of the district; the name of the thannah, from whence the report may be made, shall be marked on the envelope. *Fifteenth.* Every process and order addressed by a magistrate to a police officer, shall limit a certain time in which it is to be served, executed, and returned to the magistrate's court. *Sixteenth.* The returns to all orders and processes, and the certificates of the due publication of all proclamations, addressed by the magistrates to the police officers, shall be endorsed, as far as the size of the paper will admit, on the original order or process; and if the length of the return should render it necessary, a separate paper shall be annexed to the original document; and a copy of the return shall be entered in the register prescribed by Clause 9, Section 8, of this regulation. *Seventeenth.* The police officers shall, to the extent of their ability, carry into effect such instructions as they may receive, within the period specified in the magistrate's order; and if the directions contained in the order or process cannot be entirely carried into effect within the time limited, a report shall be made, at the expiration of such period, of the cause of delay, with specific information when a further and full return will be made, and the original order or process shall be sent to the magistrate, with such final return, endorsed as directed in the preceding section. *Eighteenth.* The darogahs and mohurirs shall be careful to render their reports and returns in as precise terms as possible, and they shall refrain from recapitulating in their returns a detail of the magistrate's orders; and when referring to such orders, shall merely state summarily the nature of the case and the date of the perwannah."

All heinous offences to be reported, though the offenders be not discovered. Unsuccessful attempt to commit offences how to be distinguished. Form No. 4 to be periodically transmitted to the superintendents of police. Rules for stringing and fitting up of all reports, examinations to be transmitted by the magistrates. Rules to be observed in transmitting papers to the foudarry court.

Limited time for the execution of orders and processes to be specified by the magistrate. Returns to orders, how to be written and registered.

In the event of delay in making such returns, the cause to be reported at the expiration of the specified time.

Reports to be accurate and concise.

*Rules regarding Thacks, and for expediting the transmission of official papers to and from the Thannahs.*

10. "First, to facilitate the communication between the magistrate's court and the stations of the darogahs of police, and to enable the magistrate to obtain speedily information of the occurrence of crimes, as well as with the view of preventing the unnecessary confinement of persons, who may be detained in custody, pending an enquiry of the police officers, or trial before the magistrate, the magistrates and the native officers of police are required

to obtain information of the occurrence of crimes, and to expedite the transmission of official papers.

Superintendence of despatches by dawk, in whom vested.

All Government dawk officers, throughout the provinces, to convey orders and reports free of expense.

Establishment of subordinate dawk stations.

Peons and pykes to be appointed by zemindars for this duty, where there is no regular dawk.

to attend, as far as may be practicable, to the directions contained in the following rules. *Second.* The superintendence of the dispatch by dawk of perwannahs to the police darogahs, and of reports from the officers of police to the magistrate's court, shall be entrusted to the nazirs of the criminal courts, and to the thannah mohurirs, who shall be held responsible for the speedy transmission of the packets to and fro; and shall report to the magistrates all instances of delay which may come to their knowledge. *Third.* As far as circumstances may admit, the magistrate's orders to his police officers, and the thannah reports, whether addressed to the magistrates, or to the superintendants of police, shall be transmitted by the Government dawk; and all dawk officers in the Company's provinces are required to receive, and convey, free of expense, such orders and reports, the same being superscribed with the name and official designation of the public officer by whom the papers may be dispatched; together with the words "Kar Surkar," to denote that they relate to the public service. *Fourth.* In cases, where a thannah station may be situated at a considerable distance from the route of the Government dawk, the magistrates, in communication with their police officers, shall establish dawk stations between the thannahs, or from the thannahs to the magistrate's court, at proper distances, according to local circumstances, but not in any instance exceeding five coss, and the land proprietors and farmers of land, or their local managers, shall be called upon to name and appoint the requisite number of peons or pykes (not being village watchmen) for the performance of this duty. In places where no establishment of regular police officers may be stationed, they shall also be required to fix on a particular house in the village, where the peons or pykes may at all times be found without delay, and to name the mundul, putwaree or other person in the village, whose business it shall be to receive and forward the papers transmitted by the dawk; a statement after the form No. 8, of the appendix,

FORM No. 8.

*Statement of Dawk Chokees established by the landholders, &c. for the conveyance of the public correspondence to, and from the Thannah of, situated at the distance of coss, South from the Sudder Station.*

No. of the Chokee.	Name of the Village or place where the Chokee may be established, and in what Pergunnah.	Name and residence of the person to whom the papers are to be delivered for dispatch.	Names of the Dawk Peons at each Station.	Name of the Landholder or local Agent, and his place of residence.	Distance of one Chokee from another.	REMARKS, Containing particulars in regard to the direction of one Chokee from another, Rivers, Ghauts, &c. &c.
1	Lal Gunge. Pergunnah Boonah.	Manick Mundul of Monza Lal Gunge.	Kulloo Pheekoo.	Mahomed Sha, Zemindar, residing at Moorsheadabad.		
2	Phoolpoor.	Ramnat Putwaree, of Monza Phoolpoor.	Maun Sing and Ram Sing.	Ramnat, Farmer, residing at Nattore.	Four coss from Lal Gunge.	South West from Lal Gunge, a Nullah between this and the last Chokee, fordable during the year.

shall be prepared and kept up at each thannah station ; and it shall be the duty of every darogah, on his appointment to a thannah, to see that this paper is included in the records of the thannah, as well as that the dawk for the conveyance of the magistrate's perwannahs and the thannah reports is duly regulated, and the peons or pykes maintained by the landholders, farmers, or managers, at the appointed stages. *Fifth.* The landholders, proprietors, and farmers of land, with their local managers and heads of villages, shall be held responsible for a due observance of the foregoing rules, and shall be liable, on proof before the magistrate, of wilful disregard of these provisions, especially after a previous admonition, to be punished by a fine, not exceeding 100 rupees, commutable, in default of payment, to confinement in the civil jail for any period not exceeding one month. *Sixth.* The nazir of the magistrate's court shall forward by the dawk, every day at the same hour, (except when otherwise specially instructed by magistrate) all perwannahs and papers addressed to the respective thannahs, which the magistrate may direct to be transmitted by the dawk ; and shall write on the envelope of each packet the date and time of dispatch. It shall likewise be the duty of the nazir to record on the envelope of all reports received from the thannahs, the date and time of their receipt. *Seventh.* All reports and papers transmitted by the dawk from the police thannahs, shall be addressed to the magistrate, and the seal of the thannah shall be affixed to the envelope ; the mohurir shall specify on the envelope the date and hour of dispatch ; and in cases where the papers of one thannah may be left at another thannah on their transmit to and from the magistrate's station, the mohurir of the latter thannah shall forward such papers ; noting on the back of the envelope, the date and hour of the arrival and departure of the dawk. *Eighth.* The police darogahs and their mohurirs are required to forward by the thannah dawk, or by the hands of their burkundazes, as occasions may offer, such reports and papers, as may be sent to them by the native commissioners, for the trial of civil suits, for the purpose of transmission to the judge of the district ; and they shall grant receipts to the native commissioners for such papers as may be delivered to them."

General duties of darogahs on this point.

Penalty in case of landholders, &c. neglecting the above rules.

Rule to prevent delay in transmission of papers by such dawks

Further rules for the transmission of thannah reports.

Darogahs to transmit by dawk or otherwise, reports and papers entrusted to them by the native commissioners.

### *Prohibiting various irregular practices on the part of the Police Officers.*

§ 11. "*First.* No police darogah, mohurir, jemadar, or burkundaz, shall trade or keep any warehouse, or shop, for wholesale or retail, within the limits of the thannah to which he may be appointed. *Second.* The darogahs of police are prohibited from employing the burkundazes of their thannahs on their own private affairs, under penalty of fine and dismission from office. *Third.* Whenever a summons or warrant, or other criminal process, may be served by a burkundaz, or other police officer receiving pay from Government, no diet money or other allowance or gratuity shall be demanded, or received, from the complainant or the accused, or from any witness or other person ; and the demand or receipt of such by any police officer, directly or indirectly, in violation of this rule, shall be punishable as a criminal offence, on conviction before the magistrate or court of circuit. The offender shall also be compellable, either on a criminal prosecution, or by a civil action, to refund the amount received, besides being liable to immediate dismission from office, under the provisions contained in the existing regulations. *Fourth.* The police darogahs are enjoined, under penalty of dismission from office, not to permit any established vakeel or mokhtar to be permanently employed at their thannahs, on the part of any landholder, farmer, local

Section 11. Police officers shall not trade. Darogahs shall not employ police officers on their own private affairs. Penalties in case of a police officer's receiving or demanding money from any of the parties in a criminal process.

Darogah to prohibit the permanent employment at his thannah.

of the agent of any landholder or farmer.

Without special authority, no darogah shall employ a vakeel of the magistrate's court on official business. Except in cases of emergency, no extra mohurirs shall be employed at thannahs without sanction of the magistrate. No professional spy to be employed by darogahs without express sanction of magistrates, but to encourage individuals to give information, with a view to the apprehension of notorious offenders.

agent, or other person. But this rule is not meant to preclude the occasional employment of a vakeel, or mokhtar, for any specific purpose when it may be necessary. *Fifth.* The darogahs and other mofussil police officers are prohibited from employing any mokhtar or vakeel at the station of the zillah or city magistrate, for the purpose of receiving and transmitting the salaries of the thannah establishment, or for any other purpose, connected with their public functions, except in particular cases, wherein they may be specially authorized by the magistrate to employ a vakeel. *Sixth.* No mohurirs or writers, excepting those on the police establishments paid by Government, shall be employed at the thannahs without the previous sanction of the magistrate, except in cases of emergency, which will not admit of delay. In the event of any police darogahs requiring the assistance of additional mohurirs, in consequence of a stress of business, he shall report the circumstance for the orders of the magistrate. *Seventh.* The darogahs are prohibited from encouraging, or employing, without the knowledge or express sanction of the magistrate, any *goindahs* or spies, who may earn a livelihood by the profession of an informer, and they shall apprehend, and send to the magistrate, any persons who may give out that they are employed as *goindahs* by the magistrate, or by the superintendent of police, unless such persons can show a written authority from the magistrate, or from the superintendent of police. The above provision shall not be construed as precluding the police officers from employing persons to trace offenders, who may have eluded the pursuit of justice ; or from encouraging persons to furnish information, by which robbers, or other known criminals, may be discovered and apprehended. On the contrary, the darogahs shall encourage such persons to communicate all the information possessed by them, and shall report to the magistrate any instance of meritorious service on the part of any such individual, by which offenders may be brought to justice, whether the individual may have personally exposed himself to trouble and risk in securing the offender, or may have merely supplied the necessary intelligence to the police officers."

### *Charges not cognizable by Police Officers.*

Section 12  
What crimes the darogahs are prohibited from taking cognizance of  
Persons bringing forward complaints of the above description, to be referred to the magistrate.

Police officers prohibited from admitting complaints, from investigating, from passing sentence, from imposing a fine or inflicting any punishment, and from making any exaction from the prosecutor or the accused, or their respective witnesses, or from any other persons whatsoever."

§ 12. "*First.* The darogahs and other native officers of police are prohibited, under pain of dismissal from office, from taking cognizance of any charge of adultery, fornication, calumny, abusive language, slight trespass, or inconsiderable assault. *Second.* Persons preferring to the native police officers charges of the nature specified in the preceding clause, shall be referred by those officers for redress to the magistrate's court, and informed that cognizance cannot be taken of their complaints at the thannahs ; and the darogah, or other police officer, to whom any such charges may be presented in writing, shall record, in the thannah diary, hereinafter prescribed, the name of the complainant, the nature of the charge, and the date on which it may be rejected. The date and ground of rejection shall also be endorsed on the written plaint, to be returned to the complainant. *Third.* The darogahs and other police officers are likewise prohibited from admitting compromises or *razeenamahs* in any cases, and from interfering in any matter which may not be expressly provided for in this, or in any other regulation, as well as, in all cases, from passing sentence upon any complaint, from imposing a fine or inflicting any punishment, and from making any exaction from the prosecutor or the accused, or their respective witnesses, or from any other persons whatsoever."

*General duties of Police Officers on receiving charges or information of heinous offences.*

§ 13. "First. On receipt of any charge or information of murder, robbery, theft, burglary, homicide, maiming, wounding, actual affray, or other heinous offence, not excepted by this regulation from the cognizance of the police darogah, the statement of the prosecutor or informer shall be certified on oath, or if the person be of such a rank or cast as would make it improper to compel an oath, by a solemn declaration, after the form No. 9, of the appendix to this regulation; and such enquiry shall be made as may be necessary to elucidate the circumstances of the case, and if there are any witnesses to the fact, or persons acquainted with the particulars, they shall be questioned, without oath, either privately and apart, or publicly, as may appear most conducive to the attainment of the truth. *Second.* It shall not be considered necessary to take down in detail the questions and answers of the witnesses, but the substance of any material information obtained from them, shall be reduced to the form of a sooruthal, or keyfeet, which document shall be authenticated by the attestation of the persons examined, and transmitted to the magistrate under the signature of the police officer by whom the enquiry may be made; the evidence of the eye-witnesses being distinguished, in the report, from that of persons deposing from hearsay. *Third.* In cases of murder, gang-robbery, burglary, attended with wounding or other violent crime, where the circumstances of the case may be elucidated in a greater degree by a sketch or plan of the spot, the same shall be prepared, if it can be done without subjecting the inhabitants to inconvenience, and submitted with the report. The police officers shall also be careful to ascertain, in all cases, the exact date and time of the day or night when the offence charged may have been committed; and shall record the date, according to the Bengal, Fussily, or other era current in the district. *Fourth.* The police darogahs are prohibited from swearing witnesses to the truth of their depositions, on any local investigation which may be made by them into the circumstances of any murder, robbery, or other crime, or in the performance of any other of their duties, unless the same be expressly sanctioned by the provisions of a regulation applicable to the case. *Fifth.* The officers of police shall endeavour, as far as practicable, to complete the

Section 13. Upon receiving information on oath, or on a hulfnama, of a crime cognizable by him, the darogah shall enquire into the circumstances, and examine, publicly or privately, witnesses to the fact. Evidence not to be detailed but the substance only to be transmitted to the magistrate.

Sketch of the spot to be transmitted under certain circumstances, and date of occurrence to be accurately noted.

Darogahs shall not swear witnesses, except in cases sanctioned by regulation. Darogahs to endeavour to dispatch all evidence.

<sup>1</sup> FORM NO. 9.

*Declaration to be subscribed by a Hindoo prosecutor, exempted from taking an oath.*

"I solemnly declare, in the presence of God, that I will state, according to the truth, all the circumstances within my knowledge, regarding the case of . I will not conceal what is true, nor depose to any thing false: if I declare any thing not warranted by the truth, I shall be deserving of punishment from Ishwur."

*Declaration to be signed by a Mohummudan prosecutor, exempted from taking an oath.*

"I solemnly declare, in the presence of Almighty God, that I will state, according to the truth, all the circumstances within my knowledge, regarding the case of . I will not conceal what is true, nor depose to any thing false: if I declare any thing not warranted by the truth, I shall be deserving of punishment from God."

*After the prosecutor has stated the charge, he is to subscribe the following declaration:—*

"I swear, in the presence of Almighty God, that I have truly and correctly stated all the circumstances within my knowledge, in regard to the case of ."

to secure the attendance of witnesses in due time, so as to prevent delay in the inquiry.

When the offenders are unknown, the witnesses to the inquiry shall not be bound over to attend, without special orders from the magistrate. Names and persons of known, but absconding offenders shall be accurately described. Separate reports to be made when a person shall, in the course of inquiry, appear to have been guilty of more than one offence.

Or when zemindars shall have been negligent in reporting.

If any person sent to the magistrate's court shall be known to have been formerly apprehended, the date of the former case shall also be reported.

Rules when darogahs shall have occasion to leave their thannahs.

Reports to be dated in the current era of the district.

enquiry in the first instance, and to collect all attainable evidence, and to bind over all the witnesses, necessary for the trial, to appear before the magistrate at the time when the report may reach the magistrate's court, in order that the case may be tried without unnecessary delay. The darogah shall send in with the chelan or dispatch, any burkundazes or other subordinate police officers, whose evidence may be necessary on the trial of the case ; and if the whole of the witnesses cannot be found at the time of transmission of the chelan, the darogah shall endeavour to collect them, and shall send them in without waiting the instructions of the magistrate. *Sixth.* In cases wherein the offenders are unknown, or though recognized, may not have been apprehended, the prescribed local inquiry into the circumstances shall, notwithstanding, be made without delay, and the police darogah shall transmit an immediate and full report of the result to the magistrate, for his information and orders. But the witnesses shall not in such cases be sent to the magistrate, nor bound over to attend him without his special instructions for the purpose. *Seventh.* In all cases where the offender may be known and may have absconded, the police officer conducting the inquiry shall ascertain and describe the person of the offender, specifying also his name, and that of his father, as well as his usual place of residence, in order that he may hereafter, if necessary, be fully identified. *Eighth.* If, in the conduct of an inquiry, the person accused or suspected should appear to have been guilty of more than one offence, cognizable by police officers, or, if any misconduct or neglect in matters of police should attach to any zemindar, farmer, local agent, village watchman, or other person, whose duty it may be to aid the police, the police darogah shall institute a distinct enquiry on each case, the result of which shall be transmitted to the magistrate in separate reports and despatches. *Ninth.* Whenever any person may be apprehended and sent to the magistrate's court, under the provisions of this regulation, and it may be known to the police darogah, or other officer presiding at the thannah, that such person has been apprehended on a former occasion by the police on any other account, the darogah or other officer, reporting on the case which may be the ground of his present apprehension, shall state also the offence for which the prisoner may have formerly been arrested, and if practicable, shall ascertain from the thannah papers and report the year and date of the case referred to. *Tenth.* The darogahs of police, when they may proceed from their thannahs for the purpose of making any local inquiry, or for the performance of any other public duty, shall state in their reports the date and time of their departure from the thannah station, and the date and time of their arrival at the place of their destination, and also of their return to the thannah. The month and year to be used on all such occasions, as well as generally in the reports of the police darogahs, shall be those of the current era of the district, whether the Bengalee, Fusilly, or Wallaity."

*Rules for holding Inquests on occasions of murder, homicides, wounding, and unnatural deaths.*

Section 14. Landholders or others held responsible for the early communication of any unusual or suspicious circumstance to the

§ 14. " *First.* The principal persons residing in villages, whether landholders or farmers, or other local managers or munduls, putwarries or other heads of villages, are hereby declared responsible for the early and punctual communication to the officers of the nearest police station, of all unnatural deaths, or deaths attended with suspicious circumstances, which may come to their knowledge ; and any landholder, farmer, manager, or other principal inhabitant of a village, who may be convicted of wilfully neglecting or

delaying to furnish the information above required, shall be liable to be fined by the magistrate, in any sum not exceeding 200 rupees; and in default of payment, to be confined for any period of imprisonment, not exceeding six months. *Second.* In all cases of murder, unnatural or suspicious death, or violent and dangerous wounding, the darogah of police shall make it an inviolable rule, immediately on receiving information, to repair in person to the spot on which the dead body, or person wounded, may have been found; or, if prevented from going personally, shall depute a proper officer; and on such occasions the following rules shall be strictly observed. *Third.* That they question privately, in the first instance, any relations, connexions, friends, or neighbours, of the deceased, or of the person wounded, who may be able to state the circumstances of the case; and that they endeavour to collect, before the inhabitants shall have assembled for the public inquest, such information as may guide their inquiries in the conduct of the investigation. *Fourth.* That they question the individual wounded, and require him, if he is able to speak, to name and describe on oath the person by whom he may have been wounded, the names of the persons present when the act was committed, and, generally, the circumstances under which the crime was perpetrated. *Fifth.* That they examine the body of the person wounded, or, in cases of death, the dead body, with a view to ascertain the number of wounds or other corporal injuries; the length, breadth, and depth, of each; with what weapons the wounds or hurts may have been given; and the parts of the body in which they may have been received; and that they record the same either at the foot of their sooruthal or report, or on a separate paper to be annexed to the report. *Sixth.* That they describe particularly the spot on which the wounded person or the dead body may have been found; and that they report whether the crime appears to have been committed on the spot, or whether the individual wounded, or the dead body, appears to have been brought and laid there; also in cases of alleged suicide or of accidental death, whether the circumstances under which the body may be found are such as to warrant a conclusion, that the deceased had met with his death from his own hands, or by misadventure, or whether any, and what grounds may exist for believing the deceased to have been killed by the hands of others; and further, that they ascertain the name of the person wounded, or of the deceased, if any person present should recognize him. *Seventh.* That if the person killed shall appear to be a stranger, and his name shall not be known, they endeavour to ascertain where he was last seen, or where he slept the night before. *Eighth.* That in cases in which the offenders may not be immediately discovered, or the cause of the murder or unnatural death or wounding may be unknown, the police officer, conducting the inquiry, endeavour to trace whether any enmity, ill-will, jealousy, or other cause of dissension, subsisted between the wounded, or deceased, and any other person or persons in the neighbourhood, and if so, the particulars of the disagreement; when and under what circumstances the wounded, or the deceased, and the persons said to bear him ill-will, may last have been seen in company, and whether any and what angry expressions had been used by the parties; moreover, in cases in which there may be reason to believe, that the unknown offender has received any wound, or other corporal injury, from resistance in the perpetration of the crime, they shall question the hujjams, village surgeons, washermen, or other persons residing in the vicinity, who, from their profession, may be likely to afford information leading to the discovery of the offender in such cases. *Ninth.* That the above enquiry be made and committed to writing in the presence of creditable people, resident on the spot or in the neighbouring villages; and that they require a sufficient number of persons present to subscribe their names to the paper, which is likewise to be

Penalties for neglect.

On receiving information of such cases, the darogah shall immediately proceed in person, or dispatch an officer to the spot. Connexions or neighbours to be questioned in the first instance.

Individuals severely wounded, to be required to describe the circumstance on oath. Rules for inspecting the body of the deceased, or of the wounded person.

Rules for the description of the place where the body was found.

If the deceased be a stranger, to ascertain where he was last seen. If the offenders shall not be speedily discovered, to ascertain whether any person in the neighbourhood bore enmity to the deceased. When the unknown offender is supposed to have been wounded, to examine the neighbouring village surgeons. The sooruthal to be attested by the darogah or police officer, and by a sufficient number of people, who may have been present.



In cases of murder, the instrument or weapon to be procured, if possible. Assistance to be procured for wounded persons.

Not to be moved so long as risk attends it.

Rules for the disposal of the body, in cases of murder or unnatural death.

attested by their own signature, and forwarded, without delay, to the magistrate. *Tenth.* In cases of murder, it shall be the duty of the officers of police to endeavour to obtain and secure the weapon or instrument with which the crime may have been committed, in order that the same may be produced and identified at the further stages of the inquiry or trial for the offence. *Eleventh.* In cases of wounding, the darogah or other police officer, conducting the enquiry, shall endeavour to obtain for the person wounded such surgical assistance as may be procurable, and, if the wounds are severe, the individual wounded shall not be moved or sent to the magistrate's court, until he may be able to travel without inconvenience or risk. The police officers are further directed to notify to the inhabitants, as occasion may offer, that, in the event of any person being wounded by robbers or others, in such manner that he cannot be conveyed to the thannah, without hazard of his life, it is not necessary to remove such person from the place where he can be best taken care of, but that immediate notice must be given at the thannah, that the police officer may proceed to the spot, in conformity with Clause Second of this section, and make the enquiry therein prescribed. *Twelfth.* In cases of murder or unnatural death, the police darogah shall, on ordinary occasions, when he has completed his inquiry, either make the body over to the charge of the relations of the deceased, or shall cause it to be buried, or burnt on the spot, as the usages of the country and religious persuasion of the deceased may render proper ; and it shall not be considered necessary to send the corpse for the inspection of the magistrate ; except in cases of murder by poison, or on occasions where the injury sustained by the deceased may be of a doubtful nature, requiring the inspection and report of a surgeon, in which cases the darogah shall, if the state of the weather and the distance from the magistrate's court will admit of the body being transported without risk of putrefaction on the road, forward the corpse covered with a cloth, in the most decent and expeditious manner practicable, to the magistrate's place of residence."

*Enquiries to be made by the Police Officers in cases of Gang-robbery, Burglaries, and other heinous offences.*

Section 15. In cases of robbery by open violence, and certain other heinous offences, the darogah will proceed to the spot or dispatch an officer.

Detail of the enquiries to be pursued in such cases.

§ 15. *First.* In all cases of gang-robbery, or other robbery by open violence, as well as in every instance of a heinous crime, attended with a violent breach of the peace or other circumstances of aggravation, the police darogah, in whose jurisdiction the offence may occur, shall, if practicable, proceed in person to the spot without delay, transmitting an immediate report of the occurrence and of his departure from the thannah, for the information of the magistrate. If unable to proceed in person, or if the case be not of a heinous nature, nor attended with circumstances of aggravation, the darogah shall be at liberty to depute a fit person from among the officers acting under him, to ascertain the facts and circumstances of the case, and to procure all the information which it may be practicable to obtain for the discovery and apprehension of the offenders. *Second.* The police officer making local enquiries of the description specified in the preceding section, shall be careful to ascertain and record the day and hour when the fact was committed, the situation of the place, the names and descriptions of any persons who may have been recognized as the perpetrators of the crime, by whom such persons may have been seen and known, and the names and description of any person suspected of being concerned in the offence committed, with the grounds of such suspicion. Also a full recital of the manner in which the crime has been effected, and in cases of robbery of the articles of property plundered,

the direction in which the robbers may have fled ; whether they had torches, and any, and what arms ; whether they attempted to conceal their persons during the robbery ; whether any arms or articles of property belonging to the robbers were picked up after the outrage ; and, if so, whether any person in the neighbourhood has recognized such articles, whether any number of persons were known to have assembled at any liquor shop, Fakeer's muth, or other place immediately preceding the occurrence of the robbery, and, if so, the general character of such persons, whether the landholders and farmers or their local agents took any and what measures, immediately after the occurrence, for the discovery and apprehension of the offenders ; whether the village watchmen were present, and showed a proper degree of attention and alacrity on the occasion, or otherwise ; whether there are any persons of notorious bad character in the neighbourhood, or persons who have before been punished for robbery and discharged from jail, and if so, where such persons were at the time of the commission of the offence. *Third.* The foregoing enquiries shall be made and committed to writing on the spot, in the form of a sooruthal or report, and in the presence of three or more creditable inhabitants of the neighbourhood, by whom it shall be attested, and the papers shall be forwarded without delay for the information of the magistrate. *Fourth.* It shall further be the duty of the police officers on occasions of the description above mentioned, as well as in cases of murder and unnatural death, to apprise the persons present at the enquiry, that their suppression or denial of any knowledge, which they may possess relative to the perpetrators of the crime, will tend to invalidate their testimony, in the event of their deposing to such knowledge at a future period. They shall, at the same time, give encouragement to all persons not accomplices or accessaries, who may have been present at the commission of a crime, to make a full communication of every fact and circumstance within their knowledge, respecting the offenders, and shall take their information or evidence with such precautions of secrecy, as may be deemed requisite, where persons supposed to have recognised any of the offenders may appear to be deterred from publicly naming them, under fear of the consequences, if the parties should not be apprehended. *Fifth.* The darogahs of police shall invariably report to the magistrate every instance of burglary and theft, which may be brought to their knowledge or otherwise, as well as of the attempts in which the offenders may not have succeeded in carrying off property. *Sixth.* In cases of burglary the police officer conducting the enquiry shall attend to the foregoing instructions, regarding enquiries in cases of robbery, as far as the same may be applicable, and shall be careful to ascertain and report the time of the day or night at which the offence was perpetrated, and the means used in effecting an entry into the habitation, and if by breaking or cutting through a wall, mat, or other partition, the length and breadth of the aperture, also whether the house or apartment into which a burglarious entry may have been effected, is used as a place of residence, or for the custody and preservation of property. *Seventh.* Police officers making enquiries in cases of robbery, burglary, and theft, shall require the village chokeedars, the landholders and their agents, and the inhabitants of the place, where the offence may be committed, to state whether they suspect any and what persons of having committed the offence ; and, if so, the grounds of their suspicion, after which, they shall take the necessary measures to ascertain how far such suspicions may be well founded, and where the persons suspected may have been at the time the crime was perpetrated."

Such enquiries are to be committed to writing, and attested by three or more respectable inhabitants of the neighbourhood. Caution against information being withheld in the first instance.

Instances of burglary and theft, or attempts, shall be reported. Accuracy to be observed in the date of the offence and description of the circumstances.

Information to be required from the zemindars and others.

*Search for plundered or stolen Property.*

Section 16.  
Search for stolen property how to be conducted. Without a written declaration, officers shall not search the interior of any building, except by special orders of the magistrate.

Execution of search warrants to be reported. Representations regarding stolen property to be sent to the magistrate for his orders.

Particulars relating to the search.

What persons to be present.

Surreptitious introduction of articles into the house to be carefully guarded against.

Rules to be observed in searching zenanas.

§ 16. "*First.* The search for plundered or stolen property, whether under the special orders of the magistrate, or under information received by the native officers of police, shall be conducted agreeably to the following rules. *Second.* The darogahs of police are prohibited, except under the special orders of the magistrate, from searching the interior of any house or building for stolen or plundered property, unless a list of the articles missing be delivered or taken down in writing at the thannah, with a declaration stating, that a robbery has been committed, and that the informant, whether he be the owner of the property or accomplice in the offence, or other person, has substantial ground to believe that the property is deposited in such house or place. *Third.* In the case of search-warrants issued from the magistrate's office, the police officers shall report the execution of the process on the back of the warrant. *Fourth.* The darogahs, when not especially instructed by the magistrate, shall transmit all representations made to them, regarding the receipt or concealment of plundered or stolen property, at or before the time when they may proceed to the search, for the information of the magistrate, and for any orders which he may deem it necessary to issue on the subject. They shall also take the necessary precautions for preventing any such property from being clandestinely removed. *Fifth.* The search for plundered and stolen property shall be proceeded on without previous notice being given to the owners or inhabitants of the house, and shall uniformly be made in the day time, unless there shall be substantial reason to believe, that in case of any delay, the property sought will be removed. The process shall invariably be conducted by the darogah, mohurir, or jemadar in person; and if the darogah cannot himself proceed, he shall issue a warrant according to the form No. 10, of the appendix." The search shall be made in the presence of three or more respectable inhabitants of the village, in which the house or place searched may be situated, who shall subscribe their names to the report made to the magistrate's office, and an opportunity shall, in every instance, be afforded to the occupant of the house of attending the search. *Sixth.* In conducting the search directed by the preceding rules, the police darogahs shall be careful that no articles of property are surreptitiously introduced into the habitation at the time of search, and no prosecutor or informer, or any other person, shall be permitted to enter, unless he allows himself to be strictly examined in the first instance. *Seventh.* Should the occupant of the house, ordered to be searched, be of such a rank in society, as would render it improper and objectionable, according to the prevailing opinions and usages of the country, for the officers of police to enter the zenana or apartments of the women, the police officers shall give due notice for the removal of any women within the zenana; and after furnishing means for their removal in

' No. 10.

*Form of Search Warrant.*

Whereas, there is strong cause to suspect, that plundered, or stolen goods or effects are within the dwelling house or premises of (name and cast of suspected person) inhabitant of ; you are hereby authorized and required, with necessary and proper assistance, to enter into the said dwelling house or premises of the said , and if any goods or effects shall be found therein, which there may appear cause to suspect to have been plundered or stolen, you are required to bring the property so found, and also the person of the said , to the Thannah of .

a suitable manner, (if they be women of rank, who, according to the customs of the country, cannot appear in public,) shall enter the zenana apartments for the purpose of completing the search, using at the same time every precaution, consistent with these provisions, for preventing the clandestine removal of property. *Eighth.* If, on examining the premises ordered to be searched, any property be discovered, which shall be alleged, by the complainant or informer at whose instance the search may be made, to have been stolen or plundered, or which there may be any other reasonable ground to believe has been acquired by theft or robbery, the darogah or other officer of police, by whom the search may have been conducted, shall endeavour to trace the actual proprietor, from whom the property may have been stolen or plundered, and shall question the occupant of the house regarding the means by which the property was obtained; and in the event of his being unable to give a satisfactory explanation, shall forward the property, together with the person in whose house it may have been discovered, to the magistrate. *Ninth.* Should any suspicious property be discovered in the course of a search conducted under the foregoing provisions, and should no person lay claim to the same, the police darogah shall compare the articles with such lists of property stolen or plundered, as may have been previously delivered into the thannah in other cases, and recorded in the register prescribed by Clause Thirteenth, Section 8, of this Regulation; and in the event of the property corresponding with the amount given in the list, shall either send the articles for the inspection of the supposed proprietor, or shall summon him to the thannah for the purpose of identifying his property. *Tenth.* On the occasion of searching a house under the foregoing rules, the police officer shall be careful to notice the particular spot, in which the property may be found, the time of finding, and the name of the finder, and all property which may be claimed as having been stolen or plundered, as well as all property of a suspicious nature found on persons charged with robbery, burglary or theft, or which may be seized by the officers of police under suspicious circumstances; shall be forwarded without delay to the magistrate, together with a despatch, drawn up under the form No. 3 of the appendix. A copy of the despatch being registered as prescribed by Clause Eleventh, Section 8, of this Regulation; the original shall be given to the burkundaz, charged with the conveyance of the property, to be delivered to the nazir on his arrival at the sudder station. *Eleventh.* Articles of value, and of small bulk, shall be fastened up in a box, petarah, or bag, and the seal of the thannah affixed. Each article of property shall have a separate number (written on paper with the seal of the thannah attached to it,) to correspond with the number contained in the first column of the despatch; and darogahs, when describing the property in their reports, shall invariably quote the number affixed to each article. *Twelfth.* No property shall be removed from a house by an officer of police, unless it be claimed or recognized as having been stolen or plundered, or considered to be suspicious; and no property, once removed, shall be returned without the special instructions of the magistrate. *Thirteenth.* On the occurrence of a heinous robbery, burglary or theft, the darogah of police shall transmit a list of the property plundered or stolen, to the proprietor or manager of the estate, in which the crime may have been committed, with an injunction to cause the list to be affixed in a conspicuous place, and also published in the several bazars and hauts, situated in the estate; at the same time requiring all gold and silver smith retail dealers, and other persons, to give notice to the officers of police against persons offering such articles for sale. *Fourteenth.* Whenever the person, in whose possession stolen or plundered property may be found, shall deny all knowledge of the theft or robbery, and assert that he procured the property by honest

The person in whose house property alleged to be stolen is found, being unable to give a good account of the same, shall be forwarded to the magistrate.

Rule for the disposal of unclaimed suspicious property.

All particulars regarding property so found, shall be carefully transmitted to the magistrate.

Rule for transmission of valuable article, of small bulk.

Unclaimed or suspected property only shall be removed, not to be restored without magistrate's order. In heinous cases, a list of property plundered to be affixed in a conspicuous place, and due notice given.

Enquiries to be made from persons in whose possession

How the property may be found.

Person finding suspicious property in his own house or premises, how to proceed.

Unclaimed property to belong to Government. Rules for its transmission.

Ten per cent. of the value of stolen property to be granted to the recovering officers.

means ; the darogah, or other police officers conducting the enquiry, shall require such person to state the circumstances under which he became possessed of the property, and shall endeavour to ascertain through whose hands it may have passed, as well as to trace the persons by whom the robbery or theft may have been committed. *Fifteenth.* Any person, who may find within his house or premises, property not his own, which he may have reason to believe lost or stolen property, or to have been deposited within his house or premises with a malicious intent, shall, within twenty-four hours after finding such property, convey it to the nearest police darogah and report the circumstances attending the discovery of the property. The darogah shall commit to writing the circumstances which may be stated by the person finding the property, and cause the same to be signed by him and attested by two or more witnesses present. Such attested writing, together with the property found, shall then be forwarded by the darogah without delay to the magistrate. *Sixteenth.* All unclaimed property, whether cattle, boats, timbers, or other goods or chattels, shall be considered as belonging to Government, and the darogahs of police shall forward any property of this description, which may come into their hands, to the magistrate of the district in which they may respectively be employed ; or if any article of unclaimed property cannot be easily moved, the darogah of police shall make over the charge of such article to the local zemindar, manager or head person of the village, until the orders of the magistrate, in regard to its disposal, can be obtained. *Seventeenth.* The darogahs and other police officers shall be entitled to a commission of ten per cent. on the value of all property stolen or plundered, which they may recover. The commission is to be paid by the owners of the property, which is to be fairly valued by the magistrate, or by any credible and competent person, whom he may appoint for that purpose. The magistrate is to cause the commission, in the case above directed, to be paid by the owner, or his agent, to the darogah, or other police officer to whom it may be due, and, if necessary, may cause a part of the property to be disposed of by public sale, for the purpose of making good the amount."

### *Duties of Police Officers with regard to Coiners and Utterers of Base Coin.*

Section 17. Darogahs shall search houses of persons accused upon credible evidence, of coinage, &c and transmit to magistrate coins, implements, and accounts, together with the offenders.

§ 17. "The darogahs of police shall apprehend and send to the magistrate all persons uttering base coin, and knowing it to be such, or who may be charged with counterfeiting or debasing the current coin. On the receipt of credible information they shall, under the provisions of Section 16, proceed to search the houses of persons accused of manufacturing or knowingly uttering base or counterfeit coin, and shall seize and transmit to the magistrate any such coin which may be found, together with all implements used for the purpose of debasing or counterfeiting the coin ; also all books of accounts relating to the sale or circulation of base coin, together with such evidence as may be procurable to establish the offence imputed to the accused."

### *Duties of Police Officers in the prevention or suppression of Affrays and Riots.*

Section 18. Officers of police to be present at fairs, festivals, &c.

§ 18. "First. The darogahs of police shall proceed in person, or depute one or more of their officers, as circumstances may require, to attend and maintain the peace at fairs, and during the celebration of festivals, at all places where any considerable number of persons may be collected together.

*Second.* On receiving intimation of any tumultuous meeting or assemblage of persons, or of any projected riot or serious disturbance, whether arising from trespass or disputes regarding land, crops, tanks, water-courses, reservoirs, or other causes; the darogahs of police shall either proceed in person or cause the mohurir, or jemadar, to repair immediately to the spot, and the police officer employed on such duty shall, in the first instance, proceed to the residence of the zemindar, talookdar or farmer, in whose estate or farm the disputants may be said to be, and require him instantly to cause them to disperse; acquainting him that the land or crop in dispute will be liable to confiscation, if any affray ensue. *Third.* In the event of this measure proving insufficient, he shall endeavour to prevail on the parties to disperse, and either to adjust their differences amongst themselves by arbitration or *punchaet*, or to have recourse to a court of judicature for the decision of their claims. In the event of such endeavours proving fruitless, the police officer, who may be present, shall declare aloud, that if any person is killed, wounded or violently beaten, all persons concerned in the affray will be brought to trial before the criminal courts. The police officers will, at the same time, strive to seize the leaders, or principal offenders; and in the event of their failing so to do, they will endeavour to ascertain their names and places of abode, and to collect sufficient evidence, if practicable, from persons unconnected with the parties, of the circumstances of the affray, the causes which led to it, and who were the first aggressors; and after taking these steps, shall set people to watch the further proceedings of the parties; and immediately communicate the whole of the particulars to the magistrate, who will adopt the necessary measures for bringing the offender or offenders to condign punishment. *Fourth.* The officers of police are required to proceed to the spot as above directed, and use every precaution to prevent affrays, but they shall confine themselves to maintaining the peace, and shall on no account take part with, or afford assistance to either side, in the dispute; and darogahs are strictly prohibited, unless under the special instructions of the magistrate, from deputing burkundazs, or muskooree peons, to defend the property of either party, applying for the aid of the police, on the ground of alleged apprehension of affray. *Fifth.* If the cause of dispute be land or crops, the darogah, in his report to the magistrate, shall describe the land contested, or the quantity or quality of the grain, and in boundary disputes where the claims of individuals may be better explained by a plan of the ground, shall prepare and transmit, with their reports, a sketch showing the outline and general position of the portions of land claimed by the contending parties."

On notice given of intended affray, officers shall require zemindars to disperse the people, on pain of confiscation of the matter in dispute.

He shall endeavour to induce them to disperse, or to submit their dispute to arbitration; he shall proclaim aloud the consequences of a breach of the peace, and take certain measures to mark the guilt.

Darogahs shall not depute burkundazs to defend the property of either party.

Disputed land or crops shall be described and boundaries sketched.

### *Duties of Police Officers in receiving confessions, and in the treatment of prisoners generally.*

§ 19. "First. Whenever any person may be apprehended and brought before a darogah or other police officer, under the provisions of this Regulation, the examination of the prisoner shall be taken without oath, in the presence of three or more credible witnesses, who are to attest the examination; and the police officer, presiding at the enquiry, shall question the prisoner fully regarding the whole of the circumstances of the case, the persons concerned in the commission of the crime, and if any property may have been stolen or plundered, the persons in possession of such property, or the place where it has been deposited: in the event of the prisoners making free and voluntary confession, it shall be immediately written down, if practicable, in the language best understood by the person confessing, and in the presence

Section 4 Examination of prisoners to be taken without oath, in the presence of three or more credible witnesses.

Rules in cases of voluntary confession.

of three or more credible witnesses, who can sign their names, and are not officers of the police or connected with the thannah establishment: if no persons can be found who may be able to read or write, the most respectable persons in the village shall be required to bear witness, and to offer their mark in attestation of the writing. The party confessing, as well as the witnesses, shall be allowed to read the same when finished, or if unable to read, the police officer recording the confession shall invariably read it over in the presence of the party and witnesses, before it is signed and attested, and shall state, at the foot of the paper, the day of the week, date, hour and place, at which it may be taken; the original confession, bearing the signatures of the party and witnesses, shall invariably be transmitted to the magistrate, and not a copy; and the police officer presiding at the enquiry, as well as the person by whom the confession may be taken down in writing, shall subscribe their signatures to the paper, in attestation of its authenticity. *Second.* No compulsion shall be used either towards parties or witnesses, for the purpose of obtaining any information whatsoever; and police officers are strictly enjoined not, on any occasion or under any pretext whatever, to encourage a prisoner, apprehended upon a criminal charge, to confess the same, or to excite the hopes or fears of a prisoner, by holding forth prospect of pardon, or using threats, or otherwise persuading or intimidating the prisoner, with the view of inducing him to confess: any species of mal-treatment inflicted on a prisoner or witness by a police officer, landholder or farmer, or by any other person whatever, whether with a view to extort a confession, or to procure information, will subject the offender to exemplary punishment, on conviction before the magistrate or court of circuit. *Third.* Whenever a confession may be taken at night, or at any other place than the police thannah, the special reason for its having been so taken shall be stated in the darogah's report. *Fourth.* The foregoing provisions are not meant to preclude the police darogah or officers presiding at the enquiry, from making any private verbal examination which he may deem requisite, with the view of ascertaining accomplices or discovering stolen property, or obtaining means of proof. *Fifth.* Prisoners confessing offences shall be kept apart from all persons in custody at the thannah, and, if practicable, shall be forwarded to the magistrate's court, under charge of a separate guard. *Sixth.* Witnesses to confessions shall invariably be bound over by the police darogahs to attend the magistrate on the arrival and examination of the prisoners at the sudder station; and the police officers shall be careful not to admit of any deviation from this rule. *Seventh.* Prisoners during their detention at the thannah shall be confined within the thannah house or guard room, or in some other convenient place of confinement, where they will not be exposed to the open air. *Eighth.* Stocks may be used at the thannahs during the night, for the purpose of securing the persons of robbers and murderers, or other persons of dangerous character, or disorderly behaviour, or persons who may have escaped from custody, until they can be forwarded to the magistrate; but the darogahs are strictly enjoined, under pain of dismissal from office, not to place any individual in the stocks, except during the night time, and then only in cases of robbery and murder, or of previous escape from custody, or when the notoriety of the prisoner's character or his behaviour may be such as to render this mode of confinement essential for his safe-guard. *Ninth.* The darogahs of police shall further be competent to use handcuffs, of a light construction, to be provided by the magistrates, (instead of fetters and ropes for the legs and arms,) for the purpose of forwarding heinous criminals with safety to the magistrate's court. *Tenth.* The darogahs shall be held strictly accountable for any ill treatment which prisoners may sustain whilst under their charge, and for any severity further than what may be

Compulsion, or holding out hopes or fears, to induce confession, strictly prohibited; penalty on conviction.

Special reason must be stated, if the confession be received at night, or in any other place than the police thannah. Darogah may hold private verbal examinations. Prisoners confessing, to be kept separate. Witnesses to be carefully bound over.

Thannah prisoners how to be confined.

Prisoners of atrocious character may, in the night time, only, be placed in stocks.

They may also be forwarded in light handcuffs.

A strict account shall be taken of unnecessary severity.

essentially requisite for securing the persons of such prisoners. *Eleventh.* Burkundazes escorting prisoners shall, on ordinary occasions, journey at a rate not less than six or more than eight coss per diem. *Twelfth.* When alighting at any village for the night, the police officers having charge of prisoners shall report their arrival to the proprietor, farmer, or head man of the village, who shall point out a proper place for securing the prisoners during the night, and shall require the village watchmen to afford their aid in guarding them. *Thirteenth.* In cases in which the prisoners may be unable to support themselves during their journey from the police thannah to the magistrate's court, the darogahs shall advance such amount for diet allowance, as may be necessary for their way-charges, not exceeding the rate of one anna per diem; reporting the same for the information and orders of the magistrate. *Fourteenth.* On the arrival of the prisoners at the sudder station, the burkundazes charged with the dispatch shall convey them to the foudjarry nazir, or to such other native officer as the magistrate may appoint, in order that they may be secured in a lock-up house, until the report of the case can be perused by the magistrate, till which time one or more of the burkundazes, who may have accompanied the prisoners, shall remain in attendance to be examined, if necessary, on any points relating to the case. *Fifteenth.* Prisoners, who may be sent from the station of one district to that of another, or who may be sent by a magistrate into the mofussil, for the purpose of being discharged, shall, exclusive of other papers, be sent with a written dispatch unsealed, showing the name of the prisoner, and his destination; and it shall be the duty of the darogahs to forward prisoners of this description according to the despatch which may accompany them, under charge of the police burkundazes from thannah to thannah. A statement of all such cases, specifying the names of the prisoners and other particulars, shall be recorded in the thannah diary, prescribed by Section 8, of this Regulation. *Sixteenth.* The darogah and other officers of police are hereby prohibited, under penalty of immediate dismission from office, from detaining any prisoners without sending them to the magistrate, beyond such time as may be indispensably requisite for the enquiries directed by this or any other regulation; and if, from any cause, the enquiry cannot be completed within forty-eight hours after the arrival of a prisoner at the cutcherry or station of the police officer, the person shall notwithstanding be sent to the magistrate with a report of the case, and a chelan or dispatch drawn up according to the form No. 2 of the appendix, a copy of which shall be given to the burkundaz, under whose charge the prisoner may be forwarded, to be delivered to the nazir on his arrival at the sudder station. *Seventeenth.* The officers of police shall report to the magistrate the cases of all persons apprehended within their respective jurisdictions, whether such persons may have been admitted to bail or otherwise; and no person who may be once apprehended shall be discharged, except on bail or under the special orders of the magistrate."

Rate of travelling for prisoners.

Headmen and others, shall provide for the custody of prisoners passing through their estates or villages.

What diet money to be allowed to prisoners unable to support themselves during their journey.

Rules for their being delivered over to the proper officers at the sudder station.

Prisoners sent from one station to another, shall be transmitted from thannah to thannah by police burkundazes.

No prisoners shall be detained at the thannah cutcherry more than forty-eight hours.

Persons apprehended, whether bailed or not, shall be reported, and shall not be discharged, except on bail or by special order.

### *Rules relating to notorious Offenders, and to Vagrants, their apprehension and discharge.*

§ 20. "First. It shall be the duty of the darogahs of police to apprehend and forward to the magistrate, all persons residing within their respective jurisdictions, who may be notorious, as decoits or robbers of any denomination; or as house-breakers, thieves, or receivers of stolen property. *Second.* On any written charge being preferred to a police darogah, against individuals within his jurisdiction, of their being notorious robbers, burglars,

Section 20. Darogahs in every district to forward to magistrate all notorious characters. Credible information being given of such



characters, darogahs are to make private enquiries.

If they see fit, they shall apprehend the person, and, as he accounts for himself, shall discharge, or transmit him to magistrate.

This rule shall not authorize the enquiries provided for in next clause.

Police officer, when directed to make a local enquiry, shall take the evidence of certain persons, as to the suspected person's mode of life.

This report, if favorable, shall alone be transmitted to magistrate, if not, witnesses shall be immediately bound over to appear.

Persons of bad and suspicious character, discharged from confinement, are to be released in presence of the headmen of their villages, who shall be

thieves, or receivers of stolen property ; or on the darogah's receiving credible information of such persons being within his jurisdiction, the darogah or other police officer, presiding in the thannah jurisdiction, shall, previously to the apprehension of the accused, make such secret and summary enquiry in the neighbourhood as may be practicable, without endangering his escape, in regard to his general character and means of subsistence ; and if there shall appear substantial grounds to believe, that the charge or information is well founded, the darogah or other police officer shall apprehend the person suspected, and shall examine him, without oath, regarding his name, connections, place of residence, occupation and means of livelihood. If, on such examination, and any further immediate enquiry, which may be practicable, there appear to be strong grounds of presumption, that the charge or information against the prisoner is *unfounded*, or greatly exaggerated ; and the prisoner shall tender sufficient bail for his appearance before the magistrate, such bail shall be accepted, or, in failure thereof, as well as in all cases wherein the examination of the prisoner may tend to confirm the truth of the charge or information against him, he shall be forwarded, under custody, to the magistrate, together with a written report of the enquiry, including such particulars as may be necessary, to enable the magistrate to form a just comprehension of the merits of the case. *Third.* The foregoing rule shall not be construed as authorizing the police officers to make the sooruthals, and enquiries regarding character provided for in the next clause, except under the special orders of the magistrate. *Fourth.* Whenever a police darogah may receive instructions from a magistrate to make a local enquiry and sooruthal, for the purpose of ascertaining the character of any person of bad fame or suspicious livelihood, the darogah shall proceed himself, or shall depute the mohurir or jemadar of the thannah to the village in which the suspected person may have been known to reside, and the darogah, mohurir, or jemadar, when not otherwise specially instructed by the magistrate, shall summon four or more of the principal inhabitants, (not being females), or of the middling classes residing in the village, and shall question them, without oath, respecting the present and former place of residence of the prisoner, his general character, means of subsistence, property in ploughs, land, cattle, and other goods and chattels ; he shall also require them to state whether the individual suspected, associates with persons of bad character, robbers, or armed men ; and, if so, the names of such persons ; whether he is frequently absent from his house or place of residence at night, without sufficient cause ; whether his expenses are in proportion to, or exceed, his means ; whether any person in the village bears the prisoner enmity ; and whether the prisoner was ever before apprehended ; and, if so, on what account. *Fifth.* The sooruthal, containing the result of the enquiry above directed, shall be signed by the persons assembled, and if the result of the enquiry be favorable to the character of the prisoner, the darogah shall only forward his report, and await the orders of the magistrate, but if unfavorable, a sufficient number of the subscribing witnesses, not, in any instance, exceeding four, (unless under the special orders of the magistrate) shall be immediately required to execute recognizances, to appear and give evidence in the foudarry court. *Sixth.* Whenever a person of bad character may be liberated from custody, or may be released from jail, after the expiration of a specific sentence of imprisonment, and the magistrate may be of opinion, with reference to the character of the prisoner, that his future conduct should be watched, such individual shall be sent to the thannah division in which his habitation may be situated, and shall be released by the officers of the police, in the presence of the munduls, putwarries, and other headmen and watchmen

of the village, to which the person liberated may belong, who shall be enjoined to afford him all practicable aid in procuring an honest livelihood; but at the same time to keep a vigilant inspection over his conduct and mode of living, and to give timely information to the police officer of the jurisdiction, in the event of his being absent from his village at night, without giving notice of his intention, or of his associating with individuals of bad reputation, or of his ceasing to labor or to obtain a livelihood by creditable means; in all which cases they will be held responsible, and liable to the penalty stated in the next clause, unless they give due information of the circumstances to the thannah. *Seventh.* On the occasion of releasing a prisoner under the provisions of the foregoing rules, the police darogah shall report to the magistrate the names of the munduls and other headmen of the village, present at the time of the prisoner's discharge; and if the person released should hereafter be convicted of any criminal offence, and it be established, that the headmen of the place neglected to furnish the information required by the preceding clause, they shall be liable to the payment of a fine, not exceeding one hundred rupees, from each individual, commutable, in default of payment, to one month's confinement in the civil jail. *Eighth.* It shall be the duty of the darogahs of police to apprehend all vagrants and suspicious persons, of whatever denomination, wandering about the country in parties, or lurking about individually, without any fixed place of abode; or who, though resident in a particular place, may have no ostensible means of honest livelihood, and who, on examination, may be unable to give a satisfactory account of themselves. *Ninth.* Police darogahs receiving information of the resort of persons of the description specified in the preceding clause, shall, previous to their apprehension, make such summary enquiry as the nature of the case may admit, without risk to their escape; and in the event of strong suspicion attaching to them, shall secure their persons, and, unless on examination, without oath, respecting their names, connections, place of residence, occupation, and means of livelihood, they can render a satisfactory account of themselves, shall forward them forthwith to the magistrate, together with a report of the circumstances under which they may have been arrested, and of the enquiry made. *Tenth.* In cases where the names of the vagrants or other suspicious persons cannot be ascertained, it shall be competent to the police darogah to apprehend such persons without a specific warrant, and in the event of any number of persons of this description being in sufficient force to resist the officers of the thannah, the darogah shall require the aid of the local zemindar, or other landholder or farmer, or of the police officers of the adjacent thannah, or shall apply for assistance from the sudder station, according to the exigency of the case. *Eleventh.* After the apprehension and examination of the persons suspected, should the information, upon which the police darogah acted, prove to be incorrect, and no sufficient reason appear for sending them to the magistrate, the darogah shall admit the parties to bail, if they are able to furnish sufficient security, and shall report the circumstances to the magistrate, without sending them to the sudder station, till the receipt of an order to that effect. *Twelfth.* In enforcing the provisions contained in the preceding rules, the darogah and other officers of police, and the village watchmen, shall be careful not to confound strangers coming from the adjacent districts or countries, for the evident purpose of cultivating land, or exercising their several professions, with vagrants or other suspected persons. On the contrary, the darogahs shall afford all due and reasonable encouragement to persons coming of their own accord into their respective limits, who may be desirous of settling therein from such industrious motives; the police officers will nevertheless keep a watchful eye over such persons, so long as it may appear necessary, and the darogahs will invariably report to the

liable to a penalty, in the event of their not giving certain enjoined information.

Penalty specified.

Darogahs shall apprehend all vagrants.

On receiving information of their resorts, care to be used in their apprehension and examination.

When names are not known, darogah may apprehend without a specific warrant; when large bodies of vagrants are assembled, he shall apply for assistance to certain authorities. In what cases the darogah empowered to admit such persons to bail and to wait the magistrate's orders.

Darogahs enjoined to be careful in the execution of this duty.

magistrate every instance, that may come to their knowledge, of an accession of this nature, to the population of their respective divisions."

### *Village Watchmen.*

Section 21.  
Darogahs shall keep a complete list of village watchmen.  
Zemindars or other authorized persons to nominate a successor on the occurrence of a vacancy.  
Village watchmen subject to police darogahs.  
Rule for the delivery of reports of watchmen residing at a certain distance from the thannahs.

Occurrences reported by the village watch to be entered in thannah diaries.  
Proclaimed offenders and those taken in the commission of public offences, shall be sent to the thannah by the village watchmen, who shall give the earliest intelligence of the residence of offenders and commission of crimes.

Rule for receiving the reports of village watchmen.

Supervision to be exercised by the darogah.

§ 21. "*First.* It shall be the duty of the darogahs of police, under the guidance and instruction of the magistrate, to prepare and keep up at their thannahs a complete register of the village watchmen, employed within the limits of the authority of the said darogahs respectively, drawn out after the form No. 6, of the appendix ; and upon the death or removal of any of the watchmen, the landholders and other persons, to whom the right of nomination to such vacancies shall belong, shall send the names of the persons whom they may appoint, to the darogah of the jurisdiction, that they may be registered by him as above directed. *Second.* The village watchmen are declared subject to the orders of the police darogahs. *Third.* Village watchmen, who may reside within one coss of the thannah station to which they may be subject, shall report daily to the thannah all occurrences connected with the police, which may have happened in their respective villages, during the preceding twenty-four hours : village watchmen, residing from one to three coss distant from the thannah, shall furnish similar reports, twice every week ; and all other watchmen, whose residence may be situated at a greater distance, shall report once in every week or fortnight, as they may be specially instructed by the police darogah so to do. *Fourth.* All occurrences reported by the village watchmen shall be recorded by the mohurirs in the thannah diaries ; but it shall not be considered necessary to enter in such diaries the reports of watchmen who have no communications to make, further than that the peace of their divisions has been undisturbed since their last report. *Fifth.* The village watchmen shall apprehend and send to the darogah, or other police officer presiding at a thannah, any person who may be taken in the act of committing murder, robbery, housebreaking, or theft ; also proclaimed offenders, and persons against whom a hue and cry shall have been raised of their having been concerned in a recent criminal offence. It shall further be the special duty of the village watchmen to convey to the thannah immediate intelligence of any robbers, who may have concealed themselves in their respective villages, or in the adjacent country ; and also of any vagrants, or other persons who may be lurking about the country without any ostensible means of subsistence, and who cannot give a satisfactory account of themselves. It shall likewise be the business of the village watchmen to convey early intimation to the thannah of all murders, robberies, burglaries, thefts, violent affrays, and other heinous offences, perpetrated in the villages or places in which they may be stationed. *Sixth.* The report of the village watchmen, to the police officers of the regular establishments, shall be made verbally ; and they shall not, unless they appear as prosecutors, be sworn to their depositions at the thannahs, or be detained at the thannahs, or sent into the magistrate's court, unless on account of misconduct, or under the special orders of the magistrate. *Seventh.* Darogahs of police shall invariably ascertain and report, when making enquiries on the occasion of any robbery, burglary, or theft, the conduct of the village watchmen ; and whether they were present at their posts when the offence was perpetrated ; if not, the cause of their absence, and whether there may be reason to believe, that they were themselves concerned in, or connived at, the commission of the crime. In the event of any neglect or suspicion of criminality attaching to a village watchman, the darogah shall either send the individual to the magistrate, with a separate report of the grounds of the charge exhibited against him, and

evidence to establish the same, or shall forward a report, in the first instance, and wait the instructions of the magistrate, as the nature of the alleged offence may dictate. In the event of any gross neglect or misconduct in the discharge of his duty, as a police officer, being established against a village watchman, he shall be liable to dismissal from his station, by order of the magistrate, independently of any punishment to which he may be subject, for specific acts of criminality, under the laws and regulations in force.

Penalty upon  
proof of negli-  
gence or abuse

Watchmen  
not to be em-  
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rogah's pri-  
vate concerns.  
In places  
where regular  
police esta-  
blishments  
may be sta-  
tioned, duties  
of watching by  
whom to be  
performed.

The village  
watchmen to  
resist robbers  
to the utmost  
of their power,  
and to require  
remandias and  
headmen to  
lend their as-  
sistance in the  
pursuit and  
apprehension  
of criminals

Penalty for  
refusal.

*Eighth.* The darogahs or their police officers are prohibited, under penalty of dismissal from office, from employing the village watchmen on their private concerns, or on any duties unconnected with the police. *Ninth.* In those towns and villages, where the darogahs of the mofussil police jurisdiction, or the officers of out-posts may be stationed, the duties of watching and patrolling shall be performed conjointly by the regular police officers and the village watchmen; and private watchmen, entertained by individuals for guarding their habitations, shops, or warehouses, shall also afford their assistance, and be considered subject, in the performance of this duty, to the orders of the police darogahs of the station. *Tenth.* On the occurrence of a gang or highway robbery, or any robbery by open violence, murder, burglary, or theft, attended with wounding, or any other heinous offence, attended with a violent breach of the peace, the village watchmen shall, to the utmost of their ability, resist and endeavour to apprehend the offenders, and shall require the headmen of the village to collect the inhabitants and to oppose and seize the criminals, or to pursue them, if they have fled; and it shall be incumbent on the inhabitants of the villages, through which, or near to which, the pursuit may lay, to afford, on the requisition of the village watchmen or other police officer, every practicable assistance towards the apprehension of the robbers or other offenders, and recovery of any property stolen or plundered by them; continuing the pursuit from village to village. Any headman or watchman of a village, who may be convicted before the local magistrate of wilful inattention to such requisition, shall be liable to fine and imprisonment, not exceeding the limitation prescribed by Section 19, Regulation 9, 1807."

### *Concurrent jurisdiction of Police Darogahs.*

§ 22. "*First.* Whenever a police darogah may receive intelligence of any murder, gang-robbery, or other heinous crime, having occurred within his jurisdiction, the perpetrators of which may not have been apprehended, he shall dispatch immediate information of the occurrence to the neighbouring police darogahs, both in the district in which his thannah may be situated, and in the adjacent districts. *Second.* The darogahs and other police officers are empowered, either under the warrant of the magistrate or without such warrant, to pursue persons charged with the crimes abovementioned, into the jurisdiction of other darogahs, whether subject to the same magistrate or to the magistrate of any other zillah or city; and the magistrates, darogahs, police officers, landholders, farmers, gomastahs of villages, cultivators of land, and all other persons having authority or residing in the jurisdiction into which the offenders may be pursued, are required to afford every assistance in their power to the pursuing officers, for the apprehension of the offenders. *Third.* It is to be understood, however, that this concurrent authority is to be exercised by the police officers only in those cases in which the crime shall have been committed within their own respective jurisdictions; or in the event of the crime having been committed in any other jurisdiction, when the offender shall be actually within their jurisdiction at the time the charge may

Section 22.  
Darogahs to  
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(if the perpe-  
trators be not  
apprehended)  
to neighbour-  
ing thannahs.  
And may pur-  
sue into other  
thannahs or  
zillahs

Under what  
circumstances  
a concurrent  
jurisdiction to  
be exercised

Rule in the case of a darogah apprehending offenders in the jurisdiction of another magistrate.

Rule with regard to invalid thannahs.

be preferred to them ; and it shall not be lawful for the darogah of one zillah or jurisdiction to issue a warrant for the apprehension of an offender, being or residing in another zillah or jurisdiction at the time of a complaint being preferred, for any crime not committed within the limits of his own jurisdiction. In such cases, the complainant must apply, in the first instance, to the magistrate of the zillah, or to the darogah of the jurisdiction in which the crime or misdemeanor shall have been committed, or in which the offender may reside or be found. But should the complainant first prefer a written application to the darogah of another jurisdiction, such darogah shall record in his diary the name of the complainant, the nature of the charge, and the date on which the complainant may have been referred to another darogah. The date and ground of such reference shall also be endorsed upon the application, to be returned to the complainant. *Fourth.* Whenever the police officers employed under one magistrate, shall apprehend offenders in the jurisdiction of another magistrate, in virtue of the powers vested in them by the preceding rules, they shall immediately deliver to the darogah of the police jurisdiction, in which the offenders may be apprehended, a list of their names, and a statement of the crimes or misdemeanors with which they may be charged ; and the latter darogah shall immediately forward such list and statement to the magistrate to whose authority he may be subject. *Fifth.* The police darogahs, in pursuance of Section 15, Regulation 1, 1804, are empowered to issue process within the limits of the invalid thannahs, in the same manner as in other parts of the country.”

### *Prosecutors and Witnesses.*

Section 23. Subpœnas how and by whom to be served.

Rules for the execution and delivery of recognizances of witnesses and prosecutors.

§ 23. “ *First.* Subpœnas to prosecutors and witnesses shall be drawn out according to the form No. 11, of the appendix,<sup>2</sup> and shall be served by a single burkundaz ; but the darogahs are strictly prohibited from delivering summonses to parties or their agents, to be served on their own witnesses. *Second.* Prosecutors and witnesses, whose attendance may be necessary at the criminal courts, shall execute recognizances, (Mochulkas) according to the forms No. 12 and No. 13 respectively, of the appendix,<sup>3</sup> before the police officers, to appear before the magistrate on a specific day ; which shall be the day whereon the party accused may be bound to appear, if he shall have been

<sup>1</sup> Vide Section referred to, in vol. iii. of this Analysis, p. 588.

<sup>2</sup> FORM No. 11.

*Subpœna to Prosecutors and Witnesses.*

“ To \_\_\_\_\_, inhabitant of \_\_\_\_\_

“ Whereas your attendance is required to state what you know in the case of \_\_\_\_\_ ; you are hereby required to appear at the thannah of \_\_\_\_\_, on (day of \_\_\_\_\_ week) the (date) at the hour of \_\_\_\_\_ ; herein fail not \_\_\_\_\_ . Dated the (day of \_\_\_\_\_ month and year current in the jurisdiction).”

<sup>3</sup> FORM No. 12.

*Recognizance to be taken from a Prosecutor.*

“ Whereas I, \_\_\_\_\_, inhabitant of \_\_\_\_\_, have complained against \_\_\_\_\_, inhabitant of \_\_\_\_\_, charging him with \_\_\_\_\_ ; I hereby engage to appear before the magistrate of the zillah (or city) of \_\_\_\_\_, on or before the \_\_\_\_\_, to prosecute the said complaint ; in default whereof, I further bind myself to pay such fine to Government as the magistrate may judge proper to impose upon me, as well as any expense that may be incurred, in consequence of my non-attendance, for compelling my appearance : in this I will not fail : date (according to the current era).”

admitted to bail, or on the day on which he may be expected to arrive at the magistrate's place of residence, if he is to be forwarded thither under custody; the police officer in whose presence the recognizance may be executed, shall forward it with his report to the magistrate, and shall deliver to the prosecutor or witness a dispatch addressed to the magistrate, and drawn up after the form No. 14 of the appendix, which the prosecutor or witness shall be required to deliver in person to the magistrate, unaccompanied by any officer of police. *Third.* The police officers are prohibited from subjecting prosecutors to any degree of restraint, unless their complaints should appear, on enquiry, to be false and malicious; in which case, the circumstances shall be reported to the magistrate, and the complainant shall be required by the darogah to furnish bail for his appearance before the magistrate. In the event of his not conforming to such requisition, he shall be forwarded under custody to the foudarry court. *Fourth.* The officers of police are strictly enjoined not to subject witnesses to any restraint or unnecessary inconvenience, nor to require them to give security for their appearance; but if any witness shall refuse to attend, or to execute the recognizance directed in Clause Second of this section, it shall be competent to the darogah or other police officers presiding at the thannah, to forward such witness under custody to the magistrate's court."

Darogahs shall, in certain cases, require bail from prosecutors, for their appearance before the magistrate. Witnesses shall be subjected to no restraint, nor required to give security. Penalty for refusing to execute recognizance.

#### Summons.

§ 24. "First. On a complaint being preferred in writing to a darogah, or to any other officer of police authorized to receive the same, against a person subject to his jurisdiction, for any bailable crime or misdemeanor declared by this regulation to be cognizable by the native officers of police, and which may not require the immediate apprehension of the accused, the police officer receiving such complaint, upon the party complaining making oath (or a solemn declaration, if the party be of a rank or cast which would render it

Section 24. On complaint supported by oath or solemn declaration, summonses shall be issued by a single burkundaz, and not by the party complaining.

#### FORM No. 13.

##### *Recognizance to be taken from a Witness.*

"Whereas I, \_\_\_\_\_, inhabitant of \_\_\_\_\_, have been named as a witness in the case of \_\_\_\_\_; I hereby engage to appear before the magistrate of the zillah (or city) of \_\_\_\_\_, on or before the \_\_\_\_\_, for the purpose of giving evidence; in default whereof, I hereby further bind myself to pay such fine to Government as the magistrate may judge proper to impose upon me, as well as any expense that may be incurred, in consequence of my non-attendance, for compelling my appearance: in this I will not fail: dated (according to the current era)."

#### FORM No. 14.

##### *Certificate of Dispatch.*

Name of the Prosecutor or Witness.	Case.	Date of dispatch from the thannah.	Name of the thannah.
Ramdial, witness.	Methoo, charged with the murder of Ram Sing.  Chelan No.	5th April.	Sumbul

When bail is not required, acknowledgment of receipt of process is sufficient.

Forms of bail for trivial or more important offences. Bail shall not be excessive.

What warrant shall be issued in cases of persons neglecting summons.

improper to compel him to take an oath) to the truth of the complaint, or without such oath or declaration, if satisfactory reason be assigned by the complainant for not attending to make the same, and the truth of the charge be deposed to on oath, or under solemn declaration, by some other credible person or persons, shall issue a summons under his official seal and signature, to be served through a single burkundaz, or through any known and accredited agent of the party complained against, who may be on the spot and willing to receive the same in behalf of his principal ; but no summons shall be delivered to a complainant to serve on the person accused. *Second.* Police officers entrusted with the service of summonses, in cases wherein bail may not be required, shall demand only an acknowledgment of the receipt of the process, and, in the absence of the party, the summons may be served on the principal person in his house or family, if such person be willing to receive the same and to return an acknowledgment for the party whose attendance is required. *Third.* The summons to be issued by police officers under the rules contained in the preceding clauses, shall be made out in the form of No. 15 of the appendix ;<sup>1</sup> but if the charge be of a serious nature, and such as may appear to require bail to secure the appearance of the party accused, either in person, or by vakeel, before the magistrate, the summons shall be drawn up according to the form No. 16,<sup>2</sup> and shall specify the bail to be given, which is in no case to exceed what may be sufficient to prevent the parties absconding, before the case shall come before the magistrate, who will then issue such further process or order as he may judge proper. *Fourth.* If an accused person, on whom a summons shall have been served as directed in the preceding rules, shall not attend in person or by vakeel, and give bail (if required) according to the exigency of the summons, within the period limited by it, the darogah shall issue a warrant, according to the form No. 17 of the appendix,<sup>3</sup> under his official seal and signature, for the apprehension

<sup>1</sup> No. 15.

*Form of Summons.*

" To \_\_\_\_\_, inhabitant of \_\_\_\_\_  
 " Whereas your attendance is necessary to answer to a charge of \_\_\_\_\_, you are hereby required to appear, in person or by vakeel, before the magistrate of the zillah (or city) of \_\_\_\_\_, (or at the thannah of \_\_\_\_\_,) on or before the \_\_\_\_\_ day of \_\_\_\_\_ : herein fail not \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_."

<sup>2</sup> No. 16.

*Form of Summons requiring Bail.*

" To \_\_\_\_\_, inhabitant of \_\_\_\_\_  
 " Whereas your attendance is necessary to answer to a charge of \_\_\_\_\_, you are hereby required to appear, in person or by vakeel, before the magistrate of the zillah (or city) of \_\_\_\_\_, (or at the thannah of \_\_\_\_\_,) on or before the \_\_\_\_\_ ; you are further required to furnish a surety (or sureties) in the sum of \_\_\_\_\_ rupees \_\_\_\_\_, for your attendance, in person or by vakeel, during the trial of the case before the magistrate."

<sup>3</sup> No. 17.

*Form of Warrant.*

" To (name and designation of person deputed to serve the warrant).  
 " Whereas \_\_\_\_\_, inhabitant of \_\_\_\_\_, stands charged with the crime of \_\_\_\_\_ ; you are hereby directed to apprehend the said \_\_\_\_\_, and to produce him before me : in this fail not."

N.B. The warrant shall be addressed to the jemadar or other police officer, by whom it is to be executed ; and shall, in all practicable cases, bear the seal of the thannah, and invariably the signature of the officer issuing the process.

of his person. *Fifth.* Whenever any process may be issued by a magistrate or darogah of police for the attendance of any prosecutor or witness, or for the apprehension of any defendant (not being a proclaimed offender), and such person may be absent or may have absconded, the police officer, entrusted with the process, shall require the proprietor, manager, or head person of the village in which the person summoned may be said to reside, to furnish a written certificate of the individual's absence, engaging therein either to cause the attendance of the individual summoned, on his return to his village, or to give information at the thannah, of his arrival. *Sixth.* Should it afterwards be established, on enquiry before the magistrate, that the person summoned was actually in the village at the time of the execution of a certificate of the above description, or should it be proved that he returned to the village afterwards, and that the person executing the certificate had wilfully neglected to give due intimation of his return to the officers of the police; the person so offending shall be liable to be fined by the magistrate, in any sum not exceeding two hundred rupees, and, in default of payment, to be confined in the civil jail for any period not exceeding one month."

In case of absence or absconding of the offender, darogah shall require from the head person of his village, an engagement that he will deliver him up on his return, or give information of his appearance. Penalty for failure in this engagement.

### *Arrest of Persons and Bail.*

§ 25. "*First.* Upon a complaint being preferred in writing to a darogah, or other police officer authorized to receive the same, or on the receipt of credible information, whether given by confessing prisoners against accomplices, or by other persons against any person subject to his jurisdiction, for any crime of a heinous nature, such as murder, robbery, house-breaking, maiming, wounding, theft, setting fire to a village house or other building, counterfeiting the current coin or knowingly uttering base coin, or any crime involving a dangerous breach of the peace, such as a violent affray or assembling persons to commit an affray, or any similar offence requiring the immediate apprehension of the offender, and on the complainant or any other credible person or persons, acquainted with the case, deposing on oath, (or under a solemn declaration) to the truth of the complaint, the darogah shall examine the complainant or party deposing regarding the circumstances of the case; and on his being satisfied from the particulars communicated, that there are grounds to believe, that the charge is well founded, and that the immediate apprehension of the offender is necessary to the ends of justice, the darogah or other police officer, by a warrant under his seal and signature drawn out according to the form No. 17, of the appendix, shall cause the person accused to be apprehended and sent in safe custody to the magistrate, within forty-eight hours after his apprehension, unless any special reason appear why the issue of process, for apprehending the party accused, should be stayed until the charge be reported for the orders of the magistrate, in which case such report shall be made without delay." *Second.* Warrants issued by the police

In charges of a serious nature, made on oath or solemn declaration, and under certain circumstances, a warrant to be issued.

Warrant by whom to be served and how to be executed

1 The following provisions, in explanation of the clause here cited, have been enacted in Section 7, Regulation 12, 1818.—

"*First.* By the first clause of Section 25, Regulation 20, 1817, the darogahs and other police officers are authorized to stay the process of arrest against persons accused of any of the offences specified in that Section, (including house-breaking and theft,) until they can receive the magistrate's orders, when any special reason may appear why the issue of process for apprehending the party accused should be stayed. In further explanation of that clause, it is hereby declared, that the darogahs and other police officers are empowered to postpone apprehending and forwarding to the magistrate, persons charged with thefts, whether attended with burglary or otherwise; provided it shall appear that the offenders shall not have used any personal violence in the occur-



Darogah to require assistance of landholders and others when necessary.

Offenders taken in the act, to be apprehended without a written warrant.

Dwelling houses not to be forcibly entered, except in cases of necessity.

Zenanas shall not be entered, except upon credible information, that offenders are there concealed, and the women to be previously allowed to withdraw.

darogah shall be served by the jemadar and burkundazes of the thannah, and the mode of execution shall be certified on the back of the process, which shall be filed and sent in to the magistrate, together with the report and chelan which may accompany the prisoners. *Third.* In issuing processes of arrest in cases in which the darogah of police may apprehend resistance, or on any occasions where the assistance of the landholders, or farmers, or their local agents, may be necessary for the due execution of the process, the darogah shall, on the face of the *dustuck*, or warrant, specifically require in writing, the proper landholder or farmer, or local agent, (as the case may be,) to back the process and to afford their aid for effecting its due execution. *Fourth.* Darogahs, mohurirs, or jemadars of the police, shall be competent to apprehend, without a written charge or warrant, persons who may be found in the act of committing a breach of the peace, or against whom a general hue and cry may be raised immediately after the commission of the criminal offence, or who shall be detected with stolen goods in their possession ; but on such occasions, it shall be incumbent on the officer of police, by whom the arrest may be made, to record his reasons for seizing the offending party, and to forward such person forthwith, together with a report of the circumstances of the case, to the magistrate of the district. *Fifth.* Officers of police shall not without necessity break open the door of a dwelling-house, or of any place of habitation, for the purpose of executing a warrant or other process of arrest. But if certain information be received, that a person charged with murder, robbery, or other heinous offence, or violent breach of the peace, and against whom a warrant or other process of arrest may in consequence have been issued, is concealed within a house or other building, and such person shall not deliver himself up on the requisition of the police officer, bearing a written warrant, and the written process to apprehend him ; the latter may, in the presence of two or more creditable inhabitants of the place, break open the outer door of the house or other building, and also the door of any interior apartment, not being a zenana or female apartment, in the actual occupancy of women, by the usage of the country considered private, for the purpose of executing the warrant, or other process of arrest entrusted to him. *Sixth.* In such cases, if information be received, that the person accused has concealed himself in a zenana or female apartment, in the actual occupancy of women, the police officer, employed to execute the warrant, shall surround the house, or take such other precaution as may be requisite to prevent the escape of the accused ; and shall endeavour to ascertain, by the means of two creditable women, unconnected with the family or with each other, whether the person against whom the warrant has been issued be really

rence, and provided that the parties against whom the offence shall have been committed, shall express their desire, that the offenders shall not be apprehended, and conveyed before the magistrate ; provided also, that the offenders have not previously been actually guilty of, or suspected of having committed theft, or burglary, or robbery. *Second.* Every case of this nature shall be fully and immediately reported by the police officers to the magistrate, who will either call for any further information which he may judge proper, or will at once determine according to the circumstances of the case, whether it is or is not necessary, for the ends of justice, that the charge should be regularly investigated, and will issue his orders accordingly. *Third.* In the exercise of that discretion, the magistrate will be governed by any extenuating circumstances, which may appear, such as the youth of the offender, his having been prompted to the offence (more especially in times of scarcity and famine) by extreme distress, and by his character appearing to have been previously respectable : under less favorable circumstances, the magistrate will also attend to the important object of preserving the honor of families, when the offender may be nearly connected with the party who has suffered the injury, and the latter may be anxious to exempt the offender from the infamy of a public ignominious punishment."

concealed in the zenana; in which case, and if such person shall not on a further requisition deliver himself up, it shall be competent to the police officer, in the presence of two or more creditable residents on the spot, to break open the female apartment and execute the process entrusted to him, giving notice at the same time to any women in the zenana, that they may be at liberty to withdraw. *Seventh.* Any wilful abuse and perversion of the powers hereby vested in police officers for the ends of public justice, will subject them, on conviction before the magistrate or court of circuit, to exemplary punishment, according to the circumstances of the case, besides immediate dismissal from office. *Eighth.* Persons charged with the commission of murder, robbery, house-breaking, theft, setting fire to any house or village, counterfeiting the coin, *maihem*, or serious wounding, where the life of the party wounded may be in danger, shall not be admitted to bail, provided that there may appear reasonable grounds for believing that such persons have been guilty of the crime imputed to them; but in all other cases, if sufficient bail be tendered for appearance before the magistrate, the darogah or other police officer shall accept such bail and shall immediately release the party apprehended. *Ninth.* The bail to be taken for appearance before the magistrate, in pursuance of the preceding rules, shall be in the form No. 18 of the appendix. *Tenth.* Persons who may wound or slay, murderers, robbers, or thieves in their own defence, or in defence of their property, shall not be proceeded against or placed in restraint, or required to give bail, except under the special orders of the magistrate; police officers are strictly prohibited from acting in violation of the rule, under penalty of dismissal from office. *Eleventh.* In cases of manifest necessity, when the darogah or other officer of police may be apprehensive of danger to the public tranquillity, by the enlargement of a person arrested on a charge of affray, violent assault, or other bailable offence, without security being taken for his peaceable conduct; the party apprehended shall be required, in addition to the bail for his appearance, to furnish security for keeping the peace, and the surety (or sureties) shall execute a recognizance according to the form No. 19 of the appendix, in an amount to be regulated by the circumstances of the case, and the condition of the person executing the same."

Abuse of power subject to exemplary punishment.

In what cases bail shall not be accepted.

Form of bail.

Persons wounding or slaying in self-defence, not to be proceeded against, except under special orders of magistrate. In cases of manifest necessity, security for peaceable conduct shall be required in addition to bail. Form of recognizance to keep the peace.

<sup>1</sup> FORM No. 18.

#### *Bail Bond.*

Whereas , inhabitant of , stands charged with , and is required to appear before the magistrate of the zillah (or city) of , on or before the , to answer to such charge: I hereby bind myself to produce the said before the said magistrate, on the date aforesaid; and to be answerable for his appearance, until a final order be passed by the magistrate upon the said charge; in default whereof, I further bind myself to forfeit to Government the sum of rupees in this I will not fail: dated this day of

<sup>2</sup> FORM No. 19.

#### *Recognizance for keeping the peace.*

Whereas , inhabitant of , stands charged with and has been called upon to give security to keep the peace, whilst such charge is under investigation: I hereby declare myself surety for the said , that he shall not commit any act that can occasion a breach of the peace, whilst the said charge is under examination; in default whereof, I further hereby bind myself to forfeit to Government the sum of rupees ; dated this day of

*Resistance or evasion of criminal process.*

Section 26:  
Persons resisting  
process  
shall be apprehended  
and sent to magistrate.

In extreme cases  
neighbouring  
thannah officers  
shall be required  
to assist.

Provisions of  
former regulations  
modified by the  
following rules.

Property in  
other zillahs of  
landholders resisting  
process shall be liable  
to confiscation,  
under confirmation  
of nizamat adawlut,  
and Government.

Property in  
land in other  
zillahs of persons  
absconding shall be  
liable to be attached,  
with a view to cause  
their appearance.

Discretion  
vested in magistrate  
to award a certain  
fine.

Moveable property  
of persons not being  
proprietors of land,  
evading or resisting  
process, liable to  
immediate attachment,  
in case of suspi-

§ 26. "*First.* If any person or persons shall resist, or cause to be resisted, the execution of any legal warrant or process, which the officers of the magistrate's court, or the officers of police may attempt to serve, or shall endeavour to rescue any person arrested, or under the custody of the magistrate's officers, or the officers of police; the darogah, if practicable, shall cause such offenders, as well as persons concerned in the resistance or rescue, to be apprehended and forwarded to the magistrate, with a report of the circumstances of the case, and the necessary evidence for establishing the misconduct of the accused; in case of actual rescue or violent resistance, he shall also, if necessary, call in the aid of the officers of police stationed in the adjacent thannahs, who shall conform to such requisitions, provided they are conveyed in writing. *Second.* In modification of the provisions contained in Sections 2 and 4, Regulation 11, 1796, and Sections 2 and 4, Regulation 3, 1804; the following rules are hereby prescribed for the guidance of the magistrates and police officers in cases of resistance or evasion of criminal process. *Third.* If the person convicted of resisting, or causing to be resisted, the process of a magistrate or police officer, be a proprietor of land, or a sudder farmer paying revenue to Government in any zillah or city jurisdiction, not being that in which the offence shall have been committed, and it appear just and proper, on due consideration of the circumstances of the case, to extend the penalty of forfeiture declared in Section 2, of each of the regulations abovementioned, to the whole or any part of such lands or farms, it shall be competent to the magistrate to adjudge the same, subject to the prescribed confirmation of the court of nizamat adawlut, and the final orders of the Governor General in Council. *Fourth.* In like manner, if a person charged with an offence of a criminal nature, who may abscond or conceal himself, so that the process issued against him cannot be served, shall possess land or other immoveable property, or a sudder farm paying revenue to Government in any other zillah or city jurisdiction, than that wherein the offence charged against him may have been committed, and it shall appear necessary to attach the same with a view to cause the attendance of the accused person under the provisions of Sections 4, 5, and 6, of the regulations specified in the preceding clause, it shall be competent to the magistrate, to whom the charge may be preferred, to order the attachment of the whole or any part of such property or farms, and the provisions of the three sections referred to shall be considered applicable in such cases. *Fifth.* In all instances of resistance to the process of a magistrate or police officer, wherein the magistrate may be of opinion that a fine to Government, not exceeding two hundred rupees, commutable, if not paid, to imprisonment, not exceeding six months, will be an adequate punishment for the offence, he is authorized to adjudge the same, instead of a forfeiture of land or farm; and his judgment in such cases, as well as in all cases wherein a similar judgment may be passed by him against persons not being proprietors of land or sudder farmers, shall not be referrible to the nizamat adawlut, but shall be final, unless altered or rescinded by the superior criminal courts, under the general rules in force. *Sixth.* If any person amenable to the authority of the zillah or city magistrates and police officers, shall resist or cause to be resisted any warrant, summons or other process of a zillah or city magistrate, or of any authorized magistrate or police officer, and such person cannot be apprehended; or if any person charged with a criminal offence of a heinous nature shall abscond or conceal himself, so that, on a warrant issued against him at his usual place of residence, by the local magistrate or police officer, he cannot be found,

and the party so resisting or evading the process against him be not a proprietor or sudder farmer of land, capable of attachment under the provisions of the regulations mentioned in the preceding section, and the foregoing clauses of the present section; but shall be in possession of any moveable property, which can be attached, and the removal of which might be expected, if not placed under immediate attachment, the police officer, issuing or serving the warrant in such cases, is hereby authorized, on receipt of credible information, that the person against whom the warrant is issued has recently absconded, or concealed himself for the purpose of evading it, to cause the attachment of any moveable property, belonging to the absconding or concealed party, within his jurisdiction; giving at the same time immediate information to the magistrate of the district, whose previous instructions shall be applied for, when there may be reason to expect a removal of the property. *Seventh.* The magistrate, on receipt of the information directed in the above clause, will determine whether the case be such as to require a continuance of the attachment, till the appearance of the accused person, or till a proclamation shall have been issued for his attendance, under the provisions of Regulation 11, 1796, and 3, 1804; and will transmit instructions to the police darogah accordingly, either for the release of the property attached by him, or for continuing the attachment, and taking an inventory of the property, in conformity with the following clause. Till the receipt of such instructions, the police officers shall adopt such measures only as may be requisite to prevent a removal of the attached property. *Eighth.* On receipt of the magistrate's instructions for an attachment of moveable property, the darogah of police, in the presence of two or more respectable inhabitants of the place, shall cause an exact inventory of the articles attached to be taken and duly attested, after which he shall deliver the property in charge to the headman or any two or more respectable inhabitants of the place, taking an acknowledgment for the same, which shall be forwarded, together with an inventory of the property, to the magistrate. *Ninth.* In all instances where an attachment of property may be made under the foregoing rule, the police darogahs shall enjoin the persons, into whose charge the same may be delivered, to take care that there is no injury done to the property; and if the person charged appear, within the period specified in the proclamation, the magistrate shall immediately, on the attendance of the party, cause the attachment to be removed, and a full account rendered of the property attached, subject only to any unavoidable expence which may have attended the attachment. *Tenth.* If the proclaimed person shall not appear within the period fixed by the proclamation, the attached property in cases of resistance of process will be liable to public sale, by order of the magistrate, for the purpose of making good any fine imposed on the offender; or should the attachment of moveable property have taken place under an evasion of process, it shall, at the end of six months, supposing the absentee not to attend during that period, be at the disposal of Government, in common with any landed property attached under similar circumstances in pursuance of the regulations in force. *Eleventh.* Whenever a proclamation may be issued through a police darogah, by order of a magistrate, requiring the attendance of any person, who may have evaded or resisted the processes of the court, the darogah shall, in the presence of two or more creditable persons, not connected with the thannah establishment, cause such proclamation to be publicly read and promulgated by beat of drum, and affixed in the police thannah, and on the outer door of the house which the party may have usually inhabited, or some conspicuous place in the village in which he may have generally resided. *Twelfth.* On the expiration of the period specified in the proclamation, if the offender shall not appear to answer to the charge alleged against him, the

cion of removal.

But till the magistrate's orders be known, darogah shall only prevent removal.

Rule of proceeding in making the attachment.

Property shall be carefully preserved and a strict account rendered, when the offender shall be entitled to receipt back.

In event of non-appearance or continued evasion, property to be sold for payment of fine, or benefit of Government

Rule for proclaiming magistrate's order for appearance.

On non-appearance, darogah shall report the due

promulgation  
with witnesses.

Darogah shall  
assist zemindars  
required by  
magistrate to  
produce offenders,  
they shall also  
receive charge of  
them.

Darogahs  
wounding or  
killing proclaimed  
offenders, who may  
resist, to be  
held guiltless.

Rewards shall  
be payable by  
the magistrate  
of the zillah or  
city in which  
offenders may  
be apprehended.

darogah shall certify to the magistrate the mode in which the proclamation has been issued, and the date, time, and place of promulgation, and shall send a sufficient number of witnesses to prove the due publication of the process.

*Thirteenth.* If any zemindar, farmer, local manager or other person, to whom a magistrate may have issued a warrant or order, in pursuance of Regulation 3, 1812, or of any other regulation in force, for the apprehension of a person or persons proclaimed, or charged with or suspected of a crime, shall apply to an officer of police for co-operation and support in the execution of such warrant or order; the police officer, to whom the application may be made, shall afford every assistance in his power for the due enforcement of the process, and if required so to do, in conformity with the sixth clause of Section 9, Regulation 3, 1812, shall receive charge of the prisoner from the zemindar, farmer, local agent or other person, and shall grant a written acknowledgment, specifying the name of the prisoner and the date on which he was delivered into his charge; he shall also, without delay, forward the prisoner under safe custody to the magistrate. If the person named in the application made to the police officer should not be apprehended, the particulars of the application, and of the measures taken in consequence, shall be recorded, for the information of the magistrate, in the thannah diary, prescribed by Section 8 of this Regulation. *Fourteenth.* If any police officer, in his endeavours to secure a proclaimed offender, for whose apprehension a proclamation may have been issued under the provisions of Regulation 9, 1808, should wound or slay him in consequence of his standing on his defence, or of his flying; the officer so wounding or slaying the criminal, shall be deemed entirely guiltless with respect to that act; in like manner, if any police officer entrusted with or assisting in the execution of any legal warrant for the apprehension of a person charged with murder, robbery, or other heinous crime, or pursuing a robber or murderer immediately after the commission of the crime, or resisting him during his attempt to perpetrate the crime, should wound or slay the offender in endeavouring to apprehend him, such police officer shall be held guiltless of any criminal act. *Fifteenth.* All rewards for the apprehension of proclaimed offenders, which may be sanctioned by the regulations, and promulgated under the seal or signature of a magistrate, joint magistrate, or of the superintendants of police, will, if the offender be seized by the officers of police or by other persons, be payable on the delivery of the person proclaimed to the magistrate of the zillah or city in which the offender may have been seized, as provided by Section 15, Regulation 16, 1810."

### *Distraint for Arrears of Land Rent.*

Section 27.  
Provision of  
former regulations  
modified.

Darogah shall  
issue a written  
process upon  
occasion of re-  
sistance made  
or apprehended,  
to an authorized  
distraint.

§ 27. "*First.* Section 8, Regulation 3, 1812, is hereby rescinded; and the provisions contained in Sections 9, 10, and 11, Regulation 7, 1799, in Sections 9, 10, and 11, Regulation 5, 1800, and in Sections 17 and 19, Regulation 28, 1803, as far as they authorize any aid to be given by the police officers to distrainers, for arrears of rent, are declared subject to the following modifications. '*Second.* Landholders, farmers, and their local agents, or other persons empowered by the regulations to distraint for arrears of land rent, who may be opposed, or may be apprehensive of resistance in effecting the regular distraint, or in maintaining possession of property previously distrained, are authorized to apply to the darogah of the than-

' The former rules, referred to in this clause, are cited in vol. iii. of this Analysis, page 526 and Sequel.

nah, in whose jurisdiction the property may be, for assistance in making or maintaining the regular distraint; and the darogah, in order to support the distrainer and to prevent a breach of the peace, shall, on the distrainer certifying on oath, or by a solemn declaration, the opposition he has experienced, or the resistance which he apprehends, depute a muskooree peon, with a written process, bearing the seal of the thannah, and signature of the darogah, and drawn up according to the form No. 20 of the appendix.

*Third.* It shall be the duty of the muskooree peon to exhibit to the defaulter the process prescribed by the preceding clause, and to use every means in his power to prevent resistance or other breach of the peace; and unless the arrear is liquidated, to support the distrainer in the exercise of the powers vested in him by the regulations. He shall also give due attention to the whole conduct and proceedings of the distrainer, so as to be able to give evidence thereon, if afterwards required, either before the judge or magistrate.

Deputed peon shall attend to the proceedings of the distrainer.

*Fourth.* Whenever any peon deputed under the foregoing rules may depose that he has been opposed in the execution of such duty, or the darogah may be satisfied from the representation made on oath by the distrainer, in the first instance, that any resistance has been offered, amounting or likely to amount to a breach of the public peace, the darogah of police shall either proceed in person, or shall depute the mohurir or jemadar of the thannah, to support the distrainer and maintain the peace. He shall also proceed in person, or depute the mohurir or jemadar of the thannah, whenever it may be proposed by a distrainer, under the powers vested in him by the regulations, to force open the outer door, or to search the private apartments of a dwelling house in which the distrainable property of a defaulter may appear to have been concealed. *Fifth.* The regular burkundazes of the police establishment shall not be employed to aid distrainers for arrears of land rent, except in cases where the darogah, mohurir, or jemadar, may proceed in person under the rules above prescribed. *Sixth.* The landholders, farmers, and other local agents, and indigo planters, and other persons, are prohibited from using stocks, or any other instrument of restraint, for the purpose of confining ryots, or other individuals indebted to them, on any account whatever; and the darogahs of police shall report to the magistrates, for such orders or process as may appear proper under the general regulations, all instances which may come to their knowledge of a violation of this rule. *Seventh.* Whenever any muskooree peons, not receiving wages from Government, may be employed by a police darogah under the provisions of this

Resistance being offered to the peon, darogah, or mohurir, or jemadar, shall proceed to his assistance. These officers only shall search dwelling houses for distrained property.

Burkundazes shall assist in distraint, under orders of darogah, mohurir, or jemadar, only. Landholders, indigo planters, and others, shall not use stocks or other instruments of restraint.

Allowance and mode of payment of peons

#### FORM NO. 20.

##### *Distraint.*

Process to be delivered to a muskooree peon, deputed to aid a distrainer.

Whereas (name of the distrainer or of his local agent,) has made oath before me, that he has been opposed, or that he fears he may be opposed, in effecting the distraint of certain property, belonging to ; which he considers it necessary to attach for the recovery of an arrear of land rent, amounting to rupees , due from (name of the defaulter or of his security,) the bearer of this process (name of the muskooree peon,) has been deputed from this thannah to aid the distress of the property of the said (name of the defaulter or security;) and it is hereby notified to the said (name of the defaulter or security,) that if he disputes the justness of the arrear demanded, it behoves him to apply forthwith under the provisions of Sections 15 and 16, of Regulation 5, 1812, to the judge or collector of the zillah, or to the cauzee, or moonsiff of the pergunnah; but that, in the mean time, he is required either to liquidate the amount claimed, or to allow his property to be peaceably distrained, under penalty of disobedience to this requisition, of suffering such punishment as the magistrate may, under the regulations, judge proper to inflict.

employed in  
distrain, not  
in the service  
of Govern-  
ment.

regulation, he shall receive tulubana, or diet allowance, from the person at whose instance he may be employed, at the rate of two annas per diem ; and the darogah shall not issue any process by the hands of a muskooree peon, until the estimated amount of the tulubana, required for the fixed allowance of the peon at the above rate, during his employment, is deposited in advance ; the darogahs are enjoined to prevent the muskooree peon from demanding or receiving, directly or indirectly, from any party, in cases in which they may be employed, any allowance or gratuity exceeding the above rate, and shall report to the magistrate any instances which may come to their knowledge of the violation of this rule."

### *Abkaree.*

Section 28.  
Darogahs shall  
assist, on the  
oath of an au-  
thorized reve-  
nue officer in  
distrain for  
arrears of ab-  
karee revenue.

§ 28. "*First.* Whenever an officer on a collector's establishment duly authorized to distrain property on account of arrears of revenue, due from any manufacturer or vender of spirituous liquors, tarry, putchuye, or intoxicating drugs, including opium, may be resisted in the enforcement of the collector's process, he shall, on certifying such resistance, on oath before a darogah of police, receive the aid of the regular police officers of the thannah, in effecting the attachment ; and the police officers shall be guided in their proceedings, in regard to entering and searching houses for property, belonging to defaulters, by the rules prescribed in this regulation, for their conduct, in cases of distrain for arrears of land rent, as far as the same may be applicable. *Second.* Darogahs of police shall, as directed in Section 24, Regulation 10, 1813,<sup>1</sup> support the officers of the abkaree mehal, in the execution of search-warrants, issued under the seal and signature of the collector, for the discovery of unlicensed stills, or of the produce of such stills. *Third.* It is provided in the regulation cited in the preceding clause, that such search-warrants shall be executed only in the day time, that is, between sun-rise and sun-set, and, if possible, in the presence of two or more respectable inhabitants of the village in which the house or place proposed to be searched may be situated. It is further provided that, in the execution of such warrants, the apartments of the women, in houses belonging to persons of respectability and credit, that is, of all those classes whose women do not ordinarily appear in public, shall not be entered by the collector's officers, or by the officers of the police. *Fourth.* The licensed venders of spirits and drugs are bound, by the conditions of their licences, not to harbour robbers, thieves, or riotous persons, nor to receive any goods or wearing apparel, in barter for liquors or drugs ; they are also bound not to open their shops before sun-rise, nor keep them open after sun-set, and are enjoined not to harbour any person in their shops during the night, but to give information to the nearest magistrate or police officer, of any suspected persons who may resort to their shops. *Fifth.* The darogahs of police are enjoined to report to the magistrate any breach of the foregoing conditions which may come to their knowledge. They will also proceed against any licensed vender of spirits or drugs, who may be charged with a criminal offence cognizable by them, according to the general rules in force, which are applicable to the charge."

Further rule  
for the assist-  
ance of reve-  
nue officers.

In such cases,  
zenanas of re-  
spectable per-  
sons shall not  
be entered.

Rules to be  
observed by  
venders of spi-  
rituous li-  
quors.

Darogahs shall  
report infrac-  
tions of those  
rules.

<sup>1</sup> Vide section referred to, in vol. iii, p. 191.

*Execution of criminal process in the commercial, salt, and opium departments; and duties of Darogahs relating to those departments.*

§ 29. "*First.* In all bailable cases, where it may be necessary, under the provisions of this regulation, to summon or apprehend any weaver, manufacturer, molungee, or any officer or person engaged in the provision of the Company's investment, or employed in the commercial, salt, or opium department; the darogahs of police shall transmit the summons or warrant, under a sealed cover, addressed to the commercial resident, salt or opium agent, or the head native officer of the aurung, kothee, or chokee, who will either give, or direct sufficient security to be given, for the due attendance of the party; certifying on the back of the process, the manner in which it has been served, and by whom the security has been given, or causing the defendant to accompany the officer, bearing the darogah's process, to the thannah. *Second.* In cases of a bailable nature, in which a person under engagements, and employed in the commercial, salt, or opium department, may be summoned under the provisions of the preceding clause, during the manufacturing season; the darogah of police shall, with the view of preventing unnecessary interruption to the manufacturer, require the party summoned, to appear in person or by vakeel, either during or after the manufacturing season, as the circumstances of the case may dictate, subject to the future orders of the magistrate, to whom the darogah shall, in each instance, report the reasons which may have influenced him in the exercise of the discretion here vested in him. *Third.* Summonses to weavers, manufacturers, molungees, or to any officers or persons engaged in the provision of the Company's investment, or employed in the commercial, salt, or opium department, to attend as witnesses, shall be served in the manner directed by the preceding clauses of this section; but the commercial resident, salt or opium agent, or the head native officer of the aurung, kothee, or chokee, shall, instead of requiring the person summoned to give security, or proceed to the thannah, take from the witness a recognizance, agreeable to the form No. 13, of the appendix, and shall deliver the same to the officer serving the process. *Fourth.* If a charge shall be preferred to a police darogah, against any weaver, molungee, or any other manufacturer, or any officer or person engaged in the provision of the Company's investment, or employed in the commercial, salt, or opium department, for an offence that is not bailable, and there shall appear to the darogah of police sufficient ground, under the provisions of this regulation, for apprehending the person so charged; the warrant for his apprehension shall require him to attend immediately in person, and shall be executed in the same manner as upon persons not so employed. But the darogah, after securing the offender, is to give notice of his apprehension to the commercial resident, salt or opium agent, or to the head officer of the nearest aurung, kothee, or chokee, as the case may be. *Fifth.* The officers of police, as required by the second clause of Section 11, Regulation 6, 1801,<sup>1</sup> shall comply with applications made to them by a salt agent, or superintendent of a salt chokee, or by the officers attached to the salt department, or by any commercial resident or agent, or collector of revenue or customs, for assistance in effecting the seizure of alimentary salt, illegally imported, manufactured, sold, or transported; and also for the seizure of adulterated common alimentary salt, and for the attachment of the cattle, carriages, or boats used in transporting

Section 29  
Security for the appearance of persons employed under commercial residents, accused of bailable offences, how to be given.

In such cases, the accused shall not be forced to appear till after the manufacturing season.

Rule for serving summonses on witnesses employed in the Company's aurung, and form of their recognizance.

Warrants for offences not bailable, shall be served upon persons so employed as upon others.

The darogah giving notice to the resident or agent.

Darogahs shall assist in the seizure of illicit salt.

<sup>1</sup> See vol. iii, p. 693.



Shall give notice of all illicit importation, adulteration, or manufacture of salt.

They shall not seize in the first instance of their own authority.

Penalty for the unwarranted seizure of salt by darogahs.

Darogahs enjoined to suppress the illicit cultivation of opium.

Shall report cases of cultivation of the poppy, and

Take security for the offender's appearance before revenue officers.

Penalty for omitting to send information.

such salt. *Sixth.* If any officer of police shall receive information of any salt, not made in the Company's provinces, having been illegally imported into the said territories, or of salt of any description being transported without the proper rowannahs or char chittees; or of any salt being manufactured, on account of individuals, by molungees or other persons, at the khalarees or salt works established by individuals, for the purpose of manufacturing salt on their own account, or that of any other person; or of the adulteration of alimentary salt, by mixing with it the substance called "karee noon," or other substance, such as "natron," or native fossil alkali, or the vegetable alkali or potash; such police officers shall transmit immediate notice thereof to the nearest officer in the salt department, empowered to attach contraband or adulterated salt, and to the magistrate, to whose immediate orders the said police officer may be subject. *Seventh.* The police officers shall confine themselves to sending the information aforesaid to the nearest officer in the salt department, and to the magistrate, and to assisting in the seizure of the salt, either under the orders of the magistrate, or on application from the officers of the salt department; and shall not seize or detain any salt in the first instance of their own authority, except when they may have been vested by order of the Governor General in Council, with special authority for making such seizures, in which case they will receive separate instructions for their guidance in the performance of that duty. *Eighth.* In all cases, in which it may appear that an attachment or seizure of salt has been made by an officer of police, without the special orders of the magistrate, or an application from any public officer authorized to require the assistance of the police officer by whom such an attachment may be made; he shall be liable to dismissal from office, and on the institution of a regular suit in the dewanny adawlut, on the part of the proprietor, to the payment of full damages to the whole amount of the loss and expence to which the proprietors may have been subjected. *Ninth.* All officers of police are strictly enjoined, under pain of dismissal from office, to assist in suppressing the illicit cultivation, manufacture, sale, purchase, importation, transportation, or possession of opium, as required by the provisions of Regulation 13, 1816,<sup>1</sup> which are herein recapitulated for their information and guidance. *Tenth.* Whenever a police darogah shall obtain intelligence of any land within his jurisdiction having been cultivated with the poppy, except with the permission or on account of Government, he shall immediately proceed to the spot, and, if the information be correct, shall attach the crop so illegally cultivated, and report the same to the magistrate. *Eleventh.* Such police officer shall, at the same time, take security from the cultivator of the ground for his appearance before the collector, or other officer in charge of the abkaree mehal; and in the event of the cultivator not giving the required security, he shall send him in custody to the magistrate, with the necessary witnesses to prove the quantity of land which may have been cultivated by him with the poppy. *Twelfth.* Any police darogah, who shall knowingly permit the cultivation of the poppy within his jurisdiction, or who shall be convicted of conniving, in any respect, at the illicit cultivation of the poppy, shall, besides being liable to dismissal from office, for neglect of duty, be further subject, on conviction before the magistrate of the zillah, to the payment of the fine stated in Section 31, Regulation 13, 1816, for whatever quantity of land shall have been so illegally cultivated within his jurisdiction, with his knowledge or connivance; and the fine, if not duly paid, shall be commutable to imprisonment for a period not exceeding six months."

<sup>1</sup> Cited at length in vol. iii, under the head of *Opium Monopoly*.

*Miscellaneous rules regarding forts, armed men, military stores, dress of sepoy or lascars, and badges, public roads, and insane persons.*

§ 30. "*First.* The darogahs of police shall uniformly report to the magistrates, whenever any individuals, within their respective jurisdictions, may entertain in their service any extraordinary number of armed men, or may commence building, or repairing any fort or gurhee, or collecting together any quantity of arms, ammunition, or military stores. *Second.* The darogahs of police are required to apprehend and send to the magistrate, in pursuance of Section 9, Regulation 11, 1806,' all persons not

Section 30.  
Darogahs shall report all circumstances that may appear to be dangerous to the public peace. Shall apprehend all unauthorized per-

<sup>1</sup> The first clause of the section here referred to extended to the whole of the territories under the presidency of Fort William, the following rules, contained in the second and succeeding clauses, which had been previously established in the province of Benares, by Sections 68 and 72, of Regulation 22, 1795 :—"*Second.* All persons, whether European or Native, within the Company's provinces, (excepting such privileged persons as the Government may specially exempt from the operation of the rule contained in this section,) are positively forbidden to dress any of their servants, either for the purpose of parade or of business, in the uniform of the Company's sepoy and lascars, or in a dress so nearly approaching to that uniform, as to enable the persons wearing it to impose themselves on the country people for sepoy and lascars. *Third.* All natives, excepting those actually in the military service of the Company, or belonging to persons specially exempted by Government from the operation of this rule, are forbidden to wear a dress similar to that mentioned in the foregoing clause. *Fourth.* Officers of every description, employed in the service of the Company, who are allowed establishments of burkundazes, peons, and pykes, in their official capacity, or who may have occasion to employ persons of any of those descriptions, in such capacity, are prohibited from clothing them with a military dress. *Fifth.* Native officers and sepoy, excepting subadars, jemadars, and serangs, even though in the service of the Company, who may temporarily reside or have occasion to travel in the interior parts of the country, unless employed on the public service, are forbidden to wear their uniform coats. *Sixth.* With the view of giving full effect to the orders contained in the preceding clauses, the military commanding officers of stations, and of detachments, in the interior parts of the country, and the several zillah and city magistrates, are hereby authorized and required, to deprive of a military dress any person who shall wear it contrary to these orders; (unless it shall appear, that such person is in the military service of the Company; in which case he shall be sent to the corps to which he may belong, with a written complaint against him.) The local officers of police are also empowered and directed to apprehend all persons of the above description, and to send them to the magistrate, who will deal with them in the manner above prescribed. *Seventh.* Military officers, or other persons, to whom escorts may be allowed, when travelling through the country by land, or proceeding by water, are forbidden to send sepoy, or lascars, into the villages, for the purpose of procuring any sort of provisions, or of pressing bearers, coolies, or boatmen. Every local officer of police, upon proper application, will, under Section 8, of this regulation, grant such assistance as he may be able to afford; and all violent measures, therefore, will be considered equally illegal and unnecessary. *Eighth.* No person shall be allowed to distinguish his burkundazes, peons, pykes, or other servants, with badges, except the public officers (civil or military) employed in the service of the Company, who are allowed establishments of burkundazes, peons, or pykes, in their official capacity, or who may have occasion to employ persons of those descriptions, in the public service. The several zillah and city magistrates are empowered and directed to apprehend any person, (not being in the service of a public officer of the Government, authorized to entertain such servants) who shall wear a badge, in opposition to the prohibition contained in this clause, and to deprive him of the badge. The local officers of police are

sons dressed in the uniform of Company's sepoy's.

What persons may wear the Company's uniform, when not employed on public duty.

Persons not in the service of a civil or military officer, shall be apprehended when wearing a badge or chuprass. Darogahs shall report encroachments on the public roads. Persons dangerously insane shall be sent to the sudder station, unless the friends of the party enter into engagements to prevent their doing mischief.

actually in the Honorable Company's military service, or belonging to persons specially exempted by Government from the operation of the rule contained in the section abovementioned, who may be found dressed in the uniform of the Company's sepoy's or lascars, or in a dress so nearly approaching to that uniform, as to enable the persons wearing it to impose themselves on the country people for sepoy's and lascars. *Third.* Native officers and sepoy's, excepting subadars, jemadars, and serangs, even though in the service of the Company, who may temporarily reside in or have occasion to travel into the interior parts of the country, being forbidden by the fifth clause of Section 9, Regulation 11, 1806, unless employed on the public service, to wear their uniform coats; the local officers of police are empowered and directed to apprehend all persons of the above description, violating this prohibition, and to send them to the magistrate. *Fourth.* The darogahs of police are also empowered and directed to apprehend, and send to the magistrate, any peon, burkundaz, pyke, or other servant, not in the employ of any public officer, civil or military, who may be distinguished by a badge or chuprass, in opposition to the prohibitory rule contained in the eighth clause of Section 9, Regulation 11, 1806. *Fifth.* The darogahs of police shall prevent all encroachments on the public roads, and shall, at the same time, report the circumstances of each case, for the information of the magistrate, and record an abstract of the same in his thannahdarry proceedings. *Sixth.* The police darogah shall secure and send to the sudder station of the district in which their thannahs may be situated, all insane persons found within the limits of their respective jurisdictions, from whose insanity there may be reason to apprehend any fatal or serious consequences, unless the friends of such persons will agree to enter into engagements to adopt such precautions as shall prevent their doing mischief. In such case, the police officer, to whom the engagements may be tendered, shall refrain from securing the person of the insane individual, and await the instructions of the magistrate, to whom the circumstances of the case shall be reported without delay."

### *Judges of Circuit, and Europeans.*

Section 31. Respect to be shown to judges of circuit in their progress. Darogah shall report the arrival and proposed residence of any European not in his Majesty's or the Company's service. Form of statement to be pre-

§ 31. "*First.* The officers of police are enjoined to show every mark of personal respect and attention to the judges of circuit, during their progress from station to station. *Second.* On the arrival of any European, not in his Majesty's or the Honorable Company's civil or military service, who may propose to settle within the limits of any thannah jurisdiction, the darogah of the division shall report the circumstance for the information of the magistrate. *Third.* The police darogahs shall, towards the close of each English year, cause the form of statement, in English and Persian, No. 21 of the

also authorized and directed to apprehend persons of the above description, and to send them to the magistrate, by whom the offender will be dealt with as above directed. Any European, not being a public officer of the Government, to whom any of such descriptions of public servants are allowed, employing badged peons, or other descriptions of servants wearing badges, contrary to this prohibition, will be liable to the severe displeasure of Government, on representation of the circumstances of the case by the magistrate, who is directed to report all such instances, for the information and orders of the Governor General in Council."

appendix,<sup>1</sup> to be exhibited to all Europeans, not in his Majesty's or the Honorable Company's civil or military service, residing within their respective jurisdictions, and shall require such Europeans to furnish, for the information of the magistrate, separate statements, filled up according to the prescribed form, either in English or Persian. *Fourth.* The statements, prescribed by the preceding rule, shall be forwarded by the police darogahs to the court of the magistrate, on or before the 5th of January in each year."

sented by darogahs to European residents, at the close of each English year. These statements to be forwarded to the magistrate.

### *Dispatches of Treasure.*

§ 32. "*First.* The darogahs of police are enjoined to afford assistance on application from the revenue officers, for the safe custody and conveyance of dispatches of treasure, and to allow such dispatches to be deposited, during the night, for better security, within the house allotted for the thannah. *Second.* The darogahs of police shall likewise, as far as their other duties will admit, afford protection to dispatches of treasure belonging to bankers and merchants, on application from the person in charge of the same."

Section 32. Darogahs to afford assistance and security to dispatches of Government treasure. And, as far as possible, of bankers and merchants also.

### *Rules relating generally to landholders, managers of estates, &c.*

§ 33. "*First.* The police darogahs shall take every favorable opportunity, when employed on local enquiries, as well as on other occasions, of explaining to the zemindars, talookdars, and other proprietors of land, malgoozary or lakheraj; to the sudder farmers and under-renters of land, dependent talookdars, naibs, and other local agents, and to all native officers employed in the collection of the revenues and rents of land, on the part of Govern-

Section 33. Darogahs to inculcate upon landholders their duties, in giving information of crimes, apprehending offenders and preventing affrays.

### <sup>1</sup> FORM NO. 21.

#### *Notice.*

All Europeans, not being in the service of his Majesty or of the Honorable Company, are hereby enjoined, on the requisition of the darogah of police, within the limits of whose jurisdiction they may be residing, to report themselves in writing to the magistrate of the district, on a separate paper, drawn out after the form subjoined.

(To be signed by the magistrate.)

### *Statement of Europeans, residing within the jurisdiction of the thannah of*

Name.	Place of residence.	Native Country.	Employment.	Year of arrival in India.	Authority for residing in India, and date.	Authority for residing in this district, and date.	Remarks.

ment or the court of wards, the duties incumbent upon them, and the responsibility attached to them, under the provisions of Regulations 9, 1808, 6, 1810, 1, 1811, 3, 1812, 8, 1814,<sup>1</sup> and any other regulations in force, to communicate to the magistrates and police darogahs, either publicly or secretly, all information which they may obtain, respecting the commission of murder, robbery, house-breaking, arson, or theft, within the limits of the estate or farm held or managed by them respectively ; or respecting the resort of any known robbers, of whatever description, or the residence of any notorious receiver or vender of stolen property, within such limits, as well as to afford their assistance in the apprehension of proclaimed offenders, and of all persons for whose apprehension warrants may have been issued by the local magistrate, in pursuance of Section 9, Regulation 3, 1812 ; and generally to co-operate with, assist, and support the police officers of Government, in maintaining the peace, preventing, as far as possible, affrays and other criminal acts of violence, or apprehending the offenders under the rules and restrictions which have been enacted and promulgated in the regulations.

*Second.* To enable the police darogahs the more effectually and satisfactorily to perform the service thus required from them, the magistrates shall be careful to furnish them with copies of, or extracts from, all regulations in force on the points above adverted to, or any other immediately connected with the aid to be given by landholders, farmers, under-tenants and managers of land, in support of an efficient police. *Third.* Copies of this regulation shall be furnished to all zemindars, or other landholders or managers of estates entrusted with the management of the police ; and such zemindars, or other landholders or managers, shall observe the rules therein prescribed, for the conduct of the police darogahs, as far as the same may be applicable to their duties as chief police officers.”

With this view magistrates shall be careful to furnish darogahs with extracts or copies of certain regulations. Zemindars entrusted with the charge of the police, to be furnished with copies of, and to obey this regulation.

### *Police of Cities.*

Section 34. Cutwals and police officers in cities and towns to be guided by this regulation, as far as applicable to them.

§ 34. “ The cutwals and other police officers appointed in the cities and towns shall be guided, in their discharge of the general duties of the police, by the rules prescribed in this regulation, for the guidance of the darogahs of police, as far as the same may be applicable ; and, in the special police duties of the cities and towns, by the rules in force which relate to the police of the cities and towns.”<sup>2</sup>

What rules are referred to in the last section of the regulation above cited.

Sections of R. 22, 1793, which relate to the cities of Dacca, Moorshedabad, and Patna.

Section 29.

The rules referred to in the last section of the regulation above cited, and which are still in force, under the general provisions of that regulation, are as follows—

Sections 29 to 34, of Regulation 22, 1793, comprise the rules established for the cities of Dacca, Moorshedabad, and Patna, omitting what relates to the office of cutwal ; which was abolished, in those cities, by Regulation 13, 1814. § 29. “ The jemadars of the establishments of the several wards, with one half of the establishments, shall patrol their respective wards, without intermission, from sun-set until twelve o'clock at night. The darogahs,

<sup>1</sup> The whole of these provisions have been stated in a preceding section.

<sup>2</sup> The rules and provisions contained in this regulation being very numerous, an useful *abstract of the contents* has been annexed to the printed copies of it ; and will be inserted in the index to this volume, under the head of *Police*.

with the other half of their establishments, shall patrol their respective wards, without intermission, from twelve o'clock at night until day light. The patrols are to move about as silently, and with as little noise as possible, that thieves and other disorderly persons may never be apprized of their approach. The patrols of the several wards are to be furnished with a singharah, or horn, which they are to sound when they meet with robbers or other persons guilty of a breach of the peace, and have occasion to give the alarm to the other patrols, or to the inhabitants of the ward, that they may co-operate to the apprehension of the offenders, but not otherwise." § 30. "To assist the darogahs in obtaining the earliest intelligence of any robbers or other offenders that may be concealed or have taken up their residence within their respective wards, a Mohullahdar and Mohullahdarin shall be appointed to each ward, subject however to the orders of the darogahs, to whom they shall convey immediate information of any offenders that may be found in their respective wards." § 31. "It shall be the duty of the darogahs of the wards to apprehend all murderers, robbers, house-breakers, thieves, and persons charged with or suspected of crimes or misdemeanors, and all vagrants who may be lurking about their respective wards without any ostensible means of subsistence, or who cannot give a satisfactory account of themselves. The darogahs shall, every morning by eleven o'clock, take before the magistrate all persons who may have been apprehended during the preceding night or day. The darogahs are prohibited detaining any persons, whom they may have apprehended, in custody, beyond the time above prescribed." § 32. "The darogahs of the wards shall not discharge any persons whom they may have once apprehended, without receiving orders from the magistrate for their release; excepting persons who have been apprehended for petty assaults or other matters, theft excepted, upon which the magistrates are empowered to pass sentence, in which cases the darogahs are permitted to discharge the defendants; provided that, previous to the time prescribed for carrying them before the magistrate, the complainants shall voluntarily deliver a razenamah, or writing, desiring to withdraw the complaint; and the defendants shall, of their own accord, execute a similar writing agreeing to the complaint being withdrawn. These razenamahs shall be attested by two creditable witnesses, and shall be transmitted, on the morning following the night or day on which they may have been executed, by the darogahs to the magistrates." § 34. "The duty of the darogahs of wards, with regard to persons charged with crimes or misdemeanors, is confined to apprehending them and causing them to be carried before the magistrate as above prescribed. The darogahs are not to enquire into, or pass sentence upon, any complaint; or impose any fine, or make any exaction, or inflict any punishment on the complainants, or the accused, or any other persons whomsoever."

By Section 11, Regulation 14, 1817, the following rules were prescribed for the city of Benares, the towns of Mirzapore, and Juanpore, and the whole of the sudder police jurisdictions of the several zillahs within the divisions of Benares and Bareilly. *Second.* The city or town, constituting, with its suburbs, the sudder police jurisdiction, shall be divided into wards. Each ward to be guarded by a police darogah, with a jemadar, and an establishment of burkundazes, chokeedars, or other watchmen. The several darogahs to be under the superintendence of a cutwal, and the whole under the immediate control of the magistrate. *Third.* The chokeedars and other watchmen, are to be stationed by the cutwal, as the magistrate may direct; and are particularly to watch the entrances of streets and passages, places where spirituous liquors are sold, and any places where numbers of people occasionally assemble; or where, from any circumstances there may be reason for special vigilance, to prevent a breach of the peace, or apprehend the

Rules for patrolling the city at night.

Section 30. Mohullahdar and Mohullahdarin to be appointed to each ward. Their duties.

What descriptions of persons the darogahs are to apprehend, and take before the magistrate.

Darogahs not to discharge persons once apprehended, except in the cases specified.

Further definition of the duties of darogahs with regard to persons apprehended.

Rules prescribed in R. 14, 1817, § 11, for the sudder police jurisdictions in the divisions of Benares and Bareilly.

Sudder police jurisdiction to be divided into wards. Each ward how to be guarded and superintended. Watchmen to be stationed by the cutwal as the magistrate may direct.

Rules for patrolling the wards.

Mohulladar and mohulladarin to be appointed to each ward, and reports to be made by the bhutiarahs and ghaut managees. Their duties.

Rules in respect to private watchmen entertained and paid by individuals.

What descriptions of persons the cutwals and darogahs are to apprehend, and how they are to proceed with them when apprehended.

Cutwals and darogahs not to discharge persons once apprehended, except in the cases and under the restrictions herein specified.

persons by whom it may be broken. *Fourth.* The jemadars of the several wards, with half of the establishment of burkundazes, and the darogahs with the other half of their establishments, shall patrol their respective wards without intermission ; the one from sun-set until twelve o'clock at night ; the other from twelve o'clock at night until day light. The patrols are to move about with as little noise as possible, that thieves and other disorderly persons may not be apprized of their approach. The patrols of the several wards, and such part of the stationary watchmen as the cutwal shall appoint, are to be furnished with a sikhara or horn, which they are to sound when they meet with robbers, or other persons guilty of a breach of the peace, and have occasion to give the alarm to each other, or to the inhabitants of the ward, that they may co-operate for the apprehension of the offenders. The cutwal is to be careful that the stationary watchmen, and the darogahs and their officers, perform the essential duties prescribed in this clause regularly and properly ; and to report to the magistrate every instance in which they may be guilty of negligence, or misconduct, in the discharge of them. *Fifth.* To assist the darogahs in obtaining the earliest intelligence of any robbers, or other offenders, who may be concealed, or have taken up their residence, within their respective wards, the *mohulladar*, and *mohulladarin*, of each ward, shall be subject to the orders of the darogah ; to whom they shall convey immediate information of any offenders who may be found in their respective wards. It shall also be the duty of the *bhutiarahs*, or other persons in charge of the public serays, and of the ghaut managees, to deliver in to the cutwal's office, or to the darogah of the ward, daily reports, of the arrival and departure of travellers, and of all persons of suspicious appearance. *Sixth.* All private watchmen, entertained by individuals for guarding their houses, shops, or other premises, within the cutwalee jurisdiction, are required to act in concert with the officers of police in maintaining the peace ; and are declared subject to the orders of the cutwal, and of the darogahs of their respective wards, in all matters relative to the police. If such watchmen be found deficient in performing the duties required from them, they shall be dismissed at the requisition of the magistrate ; who is also empowered to see that none but proper persons are appointed in their stead. *Seventh.* It shall be the duty of the cutwal and of the darogahs of wards, to apprehend all murderers, robbers, house-breakers, thieves, pick-pockets, and persons charged with, or suspected, of crimes, or misdemeanors, involving a breach of the peace ; as well as all vagrants who may be lurking about their respective jurisdictions, without any ostensible means of subsistence, and who cannot give a satisfactory account of themselves. All such persons, who may be apprehended by the darogahs, between sun-rise and sun-set, shall be conveyed to the cutwal's office immediately on their apprehension. If any such persons shall be apprehended between sun-set and sun-rise, they shall be conveyed to the cutwal's office, early in the morning after the night on which they may have been apprehended. The cutwal shall, every forenoon, by eleven o'clock, take before the magistrate, all persons who may have been apprehended by him, or by the darogahs, during the night, or subsequently to his report on the preceding day. The cutwal and darogahs are prohibited detaining, in custody, any persons whom they may have apprehended, beyond the time specified, without a special order from the magistrate. *Eighth.* The cutwal and darogahs shall not discharge any persons whom they may have apprehended, without authority from the magistrate for their release ; excepting persons who may have been apprehended for petty offences of a bailable nature, and who shall tender sufficient bail for appearance before the magistrate at the time prescribed ; or persons charged with trivial offences, such as abusive language, slight trespasses, and inconsiderable assaults or affrays ; whom the

cutwal and darogahs are permitted to discharge, if previously to the time prescribed for carrying them before the magistrate, the complainants shall voluntarily deliver a razenamah, or writing, desiring to withdraw the complaint; and the defendants shall consent to the complaint being withdrawn. The razenamahs in such cases, shall be attested by two creditable witnesses, and are to be transmitted by the darogahs, as well as all bail bonds, and recognizances, on the morning following the night or day on which they may have been executed, to the cutwal; who shall submit them to the magistrate, the same morning on which he may have received them, together with any such writings, relating to similar cases, that may have been entered into before himself. *Tenth.* The duty of the cutwal and darogahs of wards, with regard to persons charged with, or found in the act of committing, crimes or misdemeanors, is restricted in the first instance to apprehending them, and bringing them before the magistrate, either in custody, or under bail, as prescribed. They are not to make any enquiry into the truth of charges preferred to them, without special instructions from the magistrates; nor are they in any case to pass sentence, or impose a fine, or make any exaction, or inflict any punishment upon any person whatever."

To what the duty of cutwals and darogahs is restricted in the first instance. Further restrictions.

By Section 13, Regulation 22, 1793, (the object of which has been more fully provided for by Section 21, Regulation 20, 1817,) the police darogahs were directed to keep a register of the village watchmen, declared subject to their orders; and upon the death or removal of any of them, the landholders, or others, to whom the filling up the vacancies may belong, were required to send the names of the persons whom they may appoint, to the darogah of the jurisdiction, that they may be registered by them. For the more complete formation of the register in question, and to enable the zillah and city magistrates, at all times, to ascertain what number and descriptions of watchmen and guards are maintained, in aid of the police, throughout their respective jurisdictions, it was further required by Section 21, Regulation 12, 1807, "that every landholder, farmer, merchant, or other person, employing pykes, chokeedars, pasbans, nigabans, burkundazes, or any other description of watchmen, or guards, shall, within three months after the promulgation of this regulation, transmit a list thereof, specifying the names, occupations, places of residence, and allowances in land or money, of the several persons entertained by them, to the magistrate of the zillah or city in which they are employed. They shall also transmit to the magistrate a similar list, in the first month of each succeeding Bengal, Fussily, or Willaity year, (according to the era current in the district) made up to the last day of the preceding year: any neglect to furnish such lists, (especially after being called upon by the magistrate) as well as any wilful omission to include in them persons actually employed as guards or watchmen, of whatever denomination, shall be liable to a fine to Government, not exceeding two hundred rupees; to be determined by the magistrate, according to the situation of the party and circumstances of the case." It may be added, in this place, that "any pyke, chokeedar, pasban, nigaban, or other description of watchmen, subject to the orders of any cutwal, or darogah of police, who may be proved guilty of any gross neglect, or misconduct, in the discharge of his duty as a police officer, (such neglect or misconduct not being of a nature which may render it proper that he should be committed, or held to bail, for trial by the court of circuit,) "is declared by Section 6, Regulation 3, 1812, (already adverted to in stating the powers of the magistrates under Regulation 14, 1816, § 9;) "liable to suffer corporal punishment by sentence passed by the magistrate, not exceeding thirty stripes of a ratan; instead of the penalties of fine or imprisonment; provided the offender shall appear a fit object of corporal punish-

Provision for a register of village watchmen, in R. 22, 1793, § 13.

Further rule in R. 12, 1807, § 21.

The several persons specified required to send to the magistrates a list of all village watchmen in their employ.

And a similar list in the first month of each year.

Penalty for breach of this rule.

Provision in R. 3, 1812, § 6, for punishment of watchmen, guilty of gross neglect, or other misconduct.



ment; and the magistrate shall be of opinion that the infliction thereof will operate as a better example than the penalties of fine or imprisonment."

Rules enacted in R. 13, 1813, for an establishment of chokeedars in cities of Dacca, Moorshedabad, and Patna.

Extended to stations of magistrates in general, by R. 3, and 16, 1814.

But these rules are superseded and amended by the following Sections of R. 22, 1816.

Section 3. Police chokeedars entertained at the cities and stations herein specified, by whom to be appointed and maintained.

Section 4. Chokeedars to receive a monthly allowance in money.

Section 5. The number of chokeedars to be appointed and maintained, how regulated.

With a view to the establishment of a more efficient police in the cities of Dacca, Moorshedabad, and Patna, it was judged expedient, in October, 1813, to provide for the appointment and maintenance of establishments of watchmen, denominated chokeedars, to aid the regular officers of the police. It was, at the same time, deemed just and proper that the communities, for whose protection and benefit such establishments were to be entertained, should defray the charge of them. Rules for both of these purposes were accordingly enacted in Regulation 13, 1813; and by Regulation 3 and 16, 1814, they were extended to the several stations, at which the zillah and city magistrates ordinarily reside in the whole of the divisions of the lower and upper provinces, with an exception to the city of Benares; where a similar plan had been already established. It is however unnecessary to detail the provisions of the regulations abovementioned; as the whole of the rules in force for the appointment and maintenance of police chokeedars, (including a further extension of these establishments to the towns at which joint magistrates are, or may be stationed, within the divisions of Calcutta, Dacca, Moorshedabad, and Patna,) have been consolidated, and re-enacted, in the following Sections, of Regulation 22, 1816; by the second section of which Regulation 13, 1813, and Regulations 3, and 16, 1814, were rescinded from the 1st April, 1817.

§ 3. "All chokeedars who may have been appointed under the provisions of the above regulations, or whom it may hereafter be judged necessary to appoint in aid of the police in the cities of Dacca, Patna, or Moorshedabad, or at the stations at which the zillah magistrates ordinarily reside, within the provinces immediately dependent on the presidency of Fort William, or at the several towns at which joint magistrates are stationed within the divisions of Calcutta, Dacca, Moorshedabad, and Patna, shall be nominated, appointed, and maintained, by the respective communities for whose benefit and protection such subsidiary police establishments may be required; and which communities are accordingly hereby declared chargeable with the expence of maintaining such chokeedars, subject to the limitations and provisions following." § 4. "All chokeedars of police, who may have been appointed under the provisions of the regulations noticed, or who may hereafter be appointed under the provisions of this regulation, shall be paid in money only, and shall receive an allowance for their support, the amount of which shall be determined at the discretion of the magistrate, with reference to the usual wages of labor, not however exceeding three, or being less than two rupees per mensem." § 5. "The number of chokeedars to be appointed and maintained in the several cities or stations aforesaid, shall likewise be determined at the discretion of the magistrate, or joint magistrate, with reference to the known or apparent condition of the inhabitants, not however exceeding in any instance the average number of two chokeedars to every fifty shops, or occu-

<sup>1</sup> With reference to the expediency of granting a higher allowance, than the rate here specified, in particular districts, the following additional rule has been enacted in Section 2, Regulation 7, 1817.—"First. The Governor General in Council is hereby declared competent to authorize the payment to chokeedars of police, of a higher allowance than that specified in Section 4, Regulation 22, 1816, provided that such allowance shall in no instance exceed four rupees per mensem. Second. It shall be the duty of the superintendents of police to bring under the notice of Government, all instances in which it may appear expedient, on a consideration of the usual wages of labor or of other special or local circumstances, that the chokeedars entertained under the provisions of Regulation 22, 1816, should receive a higher allowance than three rupees per mensem."

pied habitations." § 6. "The aggregate sum to be collected monthly from the inhabitants of the several cities or stations aforesaid, to provide for the payment of their respective chokeedars, shall not exceed the average rate of two annas per mensem from the proprietor, or (in the absence of the proprietor) from the principal occupier of each shop or habitation." § 7. "The magistrates of the cities and zillah stations aforesaid, will continue to exercise a discretion in exempting the inhabitants of any mohullah, from the maintenance of chokeedars, in which either from their poverty or from the scanty population of the mohullah, it may not appear necessary to entertain such establishments." § 8. "On the 1st April, 1817, the several magistrates of the cities and zillahs, and joint magistrates of the stations described in Section 3, will proceed to carry into effect the provisions of this Regulation in the manner directed following." § 9. "The several magistrates and joint magistrates aforesaid will nominate and appoint five respectable inhabitants (being substantial householders) of each mohullah of the city, or other convenient division of the town, who shall constitute a panchaite, for the purpose of regulating, and of annually revising and amending the rates of assessment to be levied from the inhabitants for the maintenance of their respective chokeedars, as well as for nominating and appointing such chokeedars, subject to the approval of the magistrate, or joint magistrate; but it is hereby declared, that the persons composing the panchaite, shall not be required to realize such assessments, or to perform any duties which may not be expressly specified in this Regulation." § 10. "The panchaite, so constituted, shall receive a sunnud of appointment, under the official seal and signature of the magistrate, or joint magistrate, with a specification of the duties to be performed by them, according to the form and tenor prescribed in the appendix (A) to this Regulation." § 11. "On receipt of the list of persons assessed, which

Section 6.  
Limitation of the amount to be collected monthly, for the payment of the chokeedars.

Section 7.  
Discretionary power vested in the magistrates,

Section 8.  
The provisions of this regulation when, and in what manner to be carried into effect.

Section 9.  
Magistrates to appoint a panchaite for the purposes here-in specified.

Section 10.  
Panchaite to receive a sunnud of appointment.

Section 11.  
Magistrates to revise, amend, and finally determine the rates of assessment.

#### *Form of Sunnud (A).*

Whereas you (names of persons) inhabitants of (name of mohullah of city or town) are hereby constituted and appointed a panchaite, to regulate and fix the rates of assessment to be levied monthly from the several householders of the said (mohullah or town) for the payment of the chokeedars entertained for their protection, and to nominate and appoint such chokeedars, under the provisions following :

Article 1st. You are to regulate and determine the rates of assessment to be levied from the proprietor, or principal occupier, of each shop or habitation, within the limits of the aforesaid (mohullah or town) for the payment of the wages of the chokeedars. You are to regulate the amount payable by each individual, as equitably as may be practicable, with reference to the known or apparent condition and circumstances, and the value of property to be protected of each person assessed—Provided that no individual (whatever be his means or condition in life,) be subjected to a higher rate of assessment than one rupee, nor to a lower rate than one anna per mensem—And provided likewise, that the aggregate amount assessed, shall not exceed the average of two annas per mensem, upon each shop or occupied habitation, or the total sum of six rupees and four annas, for every fifty shops or occupied habitations.

Article 2d. In the event of any proprietor or principal occupier of any shop, or habitation in the said mohullah, being in circumstances so indigent as to be manifestly unable to pay the monthly contribution of one anna, such person shall altogether be exempt from assessment.

Article 3d. The total amount to be assessed by you, in the entire mohullah, shall be sufficient to provide for the maintenance of (number) chokeedars at the monthly wages of (amount).

Article 4th. When you shall have regulated the assessment on the principles above specified, you are to deliver to the magistrate a list, at the foot of which you shall affix your signature, specifying the names, occupation, and amount of assessment payable by each shopkeeper, or householder assessed, according to the subjoined form.

Article 5th. You are hereafter to nominate and appoint the police chokeedars, who may be entertained, under this Regulation, for the protection of the inhabitants of the

Section 12.  
Persons deem-  
ing themselves  
disproportion-  
ably assessed,  
or aggrieved,  
how to pro-  
ceed.

In what cases  
magistrates  
may receive  
petitions, on  
unstamped pa-  
per.  
Section 13.  
Publication to  
be made, of  
the rates of as-  
sessment, and  
names of per-  
sons assessed.

may be furnished by the panchaite as required by the sunnud, the magistrate or joint magistrate will revise, amend, and finally adjust the rates of assessment under the limitations prescribed, in such manner as may appear just and proper, on consideration of any complaints of inequality of assessment, or representations of inability to pay the amount assessed, which may be preferred under the section following,—provided always that the total amount assessed shall suffice to maintain the number of chokeedars the magistrate or joint magistrate may deem requisite, for the protection of the inhabitants, under the limitation specified in Section 4, of this Regulation.” § 12. “*First.* Any individual who may consider himself aggrieved by the assessment which may be fixed by the panchaite; or who shall be altogether unable to pay the lowest rate of monthly contribution, shall be at liberty to appeal to the magistrate or joint magistrate, by a petition to be presented on stamp paper, setting forth the grounds of dissatisfaction or alleged grievance; and on the party making oath to the truth of the circumstances therein stated, the magistrate, or joint magistrate, after such enquiry as he may deem necessary, will either amend the rate of assessment, or grant such other relief as may appear just and proper, and his decision on all such petitions shall be final. *Second.* The magistrates and joint magistrates are empowered to receive on unstamped paper, petitions, which may be preferred to them under the preceding clause, by persons who may make oath to their inability to pay the stamp duty; notwithstanding any thing contained in Section 19, Regulation 28, 1814.” § 13. “When the rates of assessment shall have been finally adjusted, in the manner directed in the preceding sections, a fair copy thereof, with a notification prefixed according to the form and tenor prescribed in the appendix, (B)”

aforsaid mohullah—You are to report to the magistrate the names and number of such chokeedars, who are at present appointed under Regulation 13, 1813; and you are also to report to the magistrate or police darogah of the mohullah, any neglect or misconduct of such chokeedars in the discharge of their duties, or any vacancies that may arise from their absence or other cause.

Article 6th. You are annually or at any period, during the year, when you may be required by the magistrate, to revise and amend the rates of assessment, on the principles above stated.

FORM OF RETURN TO BE MADE BY THE PUNCHAITE.				
<i>Name of Mohullah.</i>				
Names of persons assessed.		Cast or Profession.	Amount of Monthly quota.	
Gooni Doss,	- - -	Merchant,	- - -	8 Annas,
Name,	- - -	Bunneea,	- - -	4 do.
Ditto,	- - -	Sonar,	- - -	2 do.
Ditto,	- - -	Tailee,	- - -	1 do.

### 1 FORM OF NOTIFICATION (B).

Whereas (names of chokeedars to be here specified) have been appointed chokeedars for the protection of the persons and property of the inhabitants of (name of mohullah of the city or town), and whereas the under noticed rates of assessment have been determined by a panchaite, of the said inhabitants, for the payment of the monthly wages of the aforesaid chokeedars; the several persons whose names are subjoined, are hereby required to pay the monthly contributions specified with regularity to the bukshec, who shall be appointed by the magistrate to receive the same, the first payment commencing from the date of this notification, and on or before the 5th day of each succeeding (Bengal or Fussily) month, or in default thereof, any arrear that

and written in the language and character most commonly understood, shall be affixed for general information, in some conspicuous and frequented place in the mohullah, or division of the town, to which the assessments may apply; a second copy shall be affixed in the same manner at the police thannah, and a third shall be deposited in the office of the magistrate, or joint magistrate."

§ 14. "First. A revised and corrected list of names, with amended rates of assessment, regulated on the principle prescribed in the sunnud of the punchaite, (appendix A) with a notification prefixed according to the form prescribed in the appendix, (B) shall be annually prepared, and published for general information, in the manner above directed. Second. The magistrates and joint magistrates alluded to in Section 3, of this Regulation, are hereby declared competent to cause the assessments to be revised and amended by the punchaite, at any period during the year, whenever that measure may be necessary, in order to supply any deficiency that may eventually arise in the amount of the funds for the payment of the stipends of the chokeedars; but on all such occasions they will address a written order to the punchaite, attested by their official seal and signature, specifying the amount of the deficiency required to be supplied by an amended assessment, and requiring a return to be made of such amended rates, according to the form subjoined to the sunnud, in the appendix, (A) within a stated and reasonable period." § 15.

"For the purpose of realizing the amount of the assessments, for keeping with regularity and accuracy, the records appertaining to the subsidiary police establishments, and for the payment of the monthly wages of the police chokeedars, entertained under this Regulation, an intelligent and respectable native, duly qualified, shall be selected and appointed by the magistrate or joint magistrate, who shall be denominated the sudder chokeedaree bukshee, and who shall receive such fixed monthly salary and allowance for the provision of stationery and materials for keeping the prescribed records, as may be determined by the Governor General in Council. In making this selection, it shall be the duty of the magistrate, or joint magistrate, to consult as far as practicable, the wishes of the most respectable inhabitants of the town." § 16. "First. The bukshees who may be appointed under the preceding Section, shall be exclusively employed in the duties prescribed by this Regulation, to the faithful discharge of which they shall be sworn; and the magistrates and joint magistrates are strictly enjoined not to allow any police darogah, or other public officer, subject to their authority, or any other individual whatsoever, to interfere in any manner with the bukshee, in the discharge of the duties specified following. Second. The bukshee shall prepare from the lists specified in Section 10, a general register in a book, to be signed and paged by the magistrate, or by his assistant, or by the joint magistrate, containing the names of all persons assessed, the amount payable monthly by each person, and the names and

Section 11.  
Revised and amended rates of assessment to be annually published.

Magistrate and joint magistrate empowered in certain cases to cause the rates to be altered and amended during the year.

Section 15.  
A bukshee to be appointed for the realization of the assessments and other duties herein specified.

Section 16.  
Bukshee to be sworn to the faithful discharge of his duties, and any interference of police darogahs or others prohibited.

Specification of the duties of the bukshee.

may be due, will be realized by distraint and sale of the personal effects of the defaulter.

Names.	Caste or Profession.	Amount monthly assessment.

number of chokeedars, entertained in each mohullah, according to the form (C) in the appendix.' *Third.* On the 1st of each Bengal or Fussily month, the bukshee shall proceed to collect in person, if practicable, or otherwise with the aid of the chokeedars, the quotas payable by each assessed individual within the limits of the city, or town, being the station of the magistrate or joint magistrate. *Fourth.* For all sums so paid, the bukshee shall sign any receipt or acknowledgment, which may be correctly prepared and presented to him for that purpose, at the time of payment, by individuals assessed, who may be able to write ; or should the person assessed be unable to write, the bukshee shall grant a receipt. *Fifth.* On the tenth of each Bengal or Fussily month, the bukshee will deliver to the magistrate, or joint magistrate, in one list, a statement showing the names of any defaulters, the mohullah in which they may reside, and the amount due from each, according to the form (D) in the appendix,<sup>2</sup> and upon receipt of which, the magistrate or joint magistrate will proceed as hereafter directed. *Sixth.* The whole of the chokeedaree stipends, which may be realized by the bukshee, shall be immediately deposited by him, in the treasury of the magistrate, and for which the receipt of the treasurer shall be taken by the bukshee. *Seventh.* On the

<sup>2</sup> FORM OF REGISTER (C).

Name of Mohullah.	Names of Puchaite.	Names of Persons assessed.	Cast or Profession.	Monthly rates of assessment.	Total amount of assessment in each mohullah.	Names of Chokeedars.	Amount of their monthly wages.	Overplus remaining for contingencies.	Remarks, and if no puchaite appointed, to be noticed here.

FORM OF STATEMENT (D).

Name of Mohullah.	Names of Defaulters.	Cast or Profession.	Amount assessed.	Amount defalcation on the 5th.	Amount voluntarily paid previously to sale.	Remarks, showing when, and in what manner arrear realized, and if by distress and sale, the date and particulars thereof.

last day of each Bengal or Fussily month, the bukshee and police darogah jointly shall cause the attendance of the police chokeedars at the cutcherry of the magistrate, or joint magistrate, where they shall be paid their monthly wages in presence either of the magistrate or of his assistant, or of the joint magistrate; the receipt of each chokeedar being taken for the same in such form as may be convenient. *Eighth.* The bukshee will likewise prepare any summons, or process, to be issued against defaulters; he shall keep a regular and correct account of all sales, which may be made by him, under the authority of the magistrate, or joint magistrate, for the realization of arrears, according to such form as shall be prescribed by the magistrate or joint magistrate; and he shall perform any other duties which the magistrate or joint magistrate may direct, connected with the general management of this branch of the police establishments." § 17. "On receipt of the lists of defaulters specified in Clause 4th of the preceding section, the magistrate, or joint magistrate will issue a summons against such defaulters, to be written on the reverse side of the said list, requiring the immediate appearance of the persons therein named at his cutcherry, and will either himself, or by means of his assistant, examine into the merits of the case; and should the party allege that payment has been made, the magistrate, or his assistant, or the joint magistrate, shall require the production of the voucher specified in Clause 3rd, Section 15; or will make such further enquiry as he may deem proper; and in the event of its appearing from such investigation, that any arrear is due, the magistrate, or joint magistrate, will issue a written order to the bukshee to levy the same by process of distress and sale of such part of the personal property of the defaulter as may suffice to make good the amount, and all orders so passed by a magistrate or joint magistrate shall be final." § 18. "It shall be the duty of the police darogah to render the bukshee any aid he may require, in the execution of the above duty; but all sales which may become necessary under the preceding section, shall be made in the most public manner practicable; and shall be previously notified by beat of drum in the mohullah, and any overplus which may arise after payment of the arrear due, shall be restored to the party, or should the arrear be discharged at any time previously to such sale, the distress shall be immediately withdrawn and the property restored to the owner." § 19. "Any complaints which may be preferred on oath against a bukshee, appointed under this regulation, for undue exaction, malversation, or other misconduct in the discharge of the duties prescribed by this regulation, shall be cognizable by the magistrate or joint magistrate only, and on proof of any such offence to the satisfaction of the magistrate or joint magistrate, the bukshee shall be liable to dismissal from his office, and to imprisonment in the criminal jail for a period not exceeding six months; and shall likewise be required to refund to the party aggrieved any money corruptly or unduly exacted, or received, or to restore any effects, or the value thereof, which may have been illegally sold or distrained; or in default thereof, he shall be further imprisoned until the amount be paid, provided that the total period of imprisonment shall not in any case exceed one year, or should the act with which a bukshee may be charged be of a nature to render it proper that he be committed to take his trial before the court of circuit, the magistrate or joint magistrate will of course proceed against him in conformity with the provisions of the general regulations." § 20. "Whenever any charge which may be preferred against a bukshee, for any unauthorized act, alleged to have been done by him in the discharge of his duties, shall upon investigation prove manifestly unfounded, exaggerated, or vexatious, the party preferring the same shall be sentenced to punishment by fine or imprisonment, not exceeding the limitations specified in Section 10, Regulation 9, 1793, and Section 5, Regulation

Section 17.  
The magistrate how to proceed, to realize arrears due from defaulters.

Section 18.  
Police darogah to aid the bukshee if requisite in distress and sale.

Section 19.  
Complaints preferred against a bukshee how disposed of, and penalties to which the bukshee will be liable on proof of the offences herein noticed.

Section 20.  
Persons preferring unfounded or vexatious charges, how punishable.

Section 21.  
Provi on  
against any  
member, or  
member, of  
punchaite, re-  
fusing the  
office.

7, 1811." § 21. "In the event of any individual who may be appointed by a magistrate or joint magistrate, a member of a punchaite, declining, without reasonable or sufficient grounds, to undertake the office, as prescribed by this regulation, he shall either find a substitute to be approved by the magistrate or joint magistrate, or shall be subject to the payment of a penalty not exceeding fifty rupees, to be regulated at the discretion of the magistrate, or joint magistrate, with reference to the circumstances of the individuals, and which shall be levied by the usual process of distress and sale of property. Or in the event of the persons who may be nominated and appointed by the magistrate, or joint magistrate, to constitute the punchaite, in any instance failing or objecting to perform the duties required of them, the magistrate or joint magistrate will proceed to regulate the assessments, and to appoint the requisite number of chokeedars by means of the bukshee and the darogah of police; but this discretion shall not be exercised, except in cases of indispensable necessity, to provide for the objects in view; and any such interposition of the authority of the magistrate, or joint magistrate, shall be withdrawn, whenever the inhabitants of the mohullah, or other division of a town, shall petition to be allowed to form the assessments and to appoint chokeedars in the manner otherwise provided for by this regulation." § 22. "It shall be the duty of the chokeedars who may be appointed under this regulation, constantly to watch over and protect the safety of the persons and the property of the inhabitants of their respective mohullahs, or divisions to which they may belong; to apprehend and immediately to convey to the cutwal, or darogah of police, to whose authority they may be subject, any person or persons who may be taken in the act of committing murder, robbery, house-breaking, or theft; or in the actual commission of any breach of the peace, or against whom a hue and cry shall have been raised. It shall also be their special duty to convey to the cutwal or darogah immediate intelligence of the resort of any receivers of stolen goods, or of any robbers or other persons of notorious or suspected bad livelihood, within the limits of their respective divisions; but they shall not interfere in cases of petty assault, abuse, adultery, or abortion; nor shall any person be arrested by a police chokeedar, except in cases herein specified, unless under the special warrant of the magistrate, or of the cutwal or darogah of police to whose authority they may be subject." § 23. "Chokeedars who may be appointed under this regulation, shall not be removed without the sanction of the magistrate, or joint magistrate, and any chokeedar who may be proved guilty of neglect or misconduct in the discharge of his duties, or who may be convicted of connivance at the commission of any robbery or other heinous offence, shall be dismissed by the magistrate or joint magistrate from his situation, and shall be further punishable as the law directs." § 24. "The several zillah and city magistrates and the joint magistrates adverted to in Section 3, of this regulation, will cause to be annually prepared by the bukshee a complete statement according to the form in the appendix, (C) of all subsidiary police establishments, which may be entertained on the principle of the provisions of this regulation, within the limits of their respective jurisdictions; and will transmit the same in the month of January in each year, through the office of the superintendent of police, for the consideration of the Governor General in Council."

Section 22.  
Specification  
of the duties  
of chokeedars  
appointed un-  
der this regu-  
lation.

Section 23.  
Chokeedars  
not removable  
without the  
sanction of the  
magi-  
strate,  
and how pun-  
ishable for  
neglect, or  
misconduct, or  
other offence.  
Section 24.  
Annual state-  
ments to be  
furnished by  
the magis-  
trates.

R. 22, 1793, § 20.  
Rule for police  
darogahs in  
Bengal, Belhar,  
and Orissa, re-  
lative to the  
seizure of pro-  
hibited boats,  
being such as  
are used by  
river dacoits.

In addition to the general rules for the guidance of police darogahs, which have been cited from Regulation 20, 1817, the darogahs in the lower provinces are authorized and directed, by Section 20, Regulation 22, 1793, "to seize all boats built, used, or transferred, in opposition to the following rules," contained in that section; to apprehend and send to the local magistrate the artificers employed in repairing or building such boats; (being

particularly adapted to the use of dacoits, who formerly infested the rivers in the lower provinces;) and to report to him the name of the proprietor of the village in which they may have been built or repaired. "First. All persons are prohibited building or making use of boats of the following denominations and dimensions, or of boats of any other denominations, being of the same dimensions, without previously obtaining from the magistrate the written authority hereafter directed :—

	Covids length.	Covids breadth.
Luckhas,	40 to 90	2½ to 4
Jelkas,	30 to 70	3½ to 5

Paunsways of Chandpore carrying more than thirty oars.

*Second.* The magistrates are directed to seize and confiscate all boats of the foregoing descriptions, which may be built, used, or transferred, within the limits of their respective jurisdictions, without a written authority from them for that purpose. *Third.* Any zemindar or other landholder allowing any boat, of either of the descriptions above specified, to be built or repaired within the limits of his zemindarry, unless a writing shall be produced to him under the seal and signature of the magistrate of the zillah, authorizing the building or using of such boats, shall forfeit to Government the village in which such boat shall be proved to have been so built or repaired.

*Fourth.* All carpenters, blacksmiths, or other artificers, are prohibited engaging for, or being employed in the building or repairing of boats of the descriptions abovementioned (unless the person offering to employ them shall produce a writing under the seal and signature of the magistrate, authorizing the building or using of such boat) under pain of being committed to close imprisonment for any period not longer than one month, or suffering corporal punishment not exceeding twenty strokes with a ratan. The magistrates are empowered to cause artificers, who may be proved to have offended against the prohibition contained in this clause, to be punished in the manner and under the limitations directed according to the circumstances of the case.

*Fifth.* The magistrates are empowered to authorize any person to build or use boats, of the dimensions or descriptions above prohibited, for the purposes of trade, or of conveying themselves from place to place by water, or for recreation, but such authority is to be given in writing under his official seal and signature, and is constantly to remain with the person to whom the building of the boat may be committed whilst the boat is building, or on board of the boat in charge of some person after it is built, otherwise the boat shall be liable to seizure and confiscation, notwithstanding such writing, in the same manner as if the boat had been built and used without such authority. The magistrates are to be careful not to grant licences to build or use boats of the above denominations or dimensions, excepting to persons whom they may be satisfied will not allow them to be employed for any improper purposes. All persons desirous of building or using boats of the prohibited dimensions and descriptions, or to sell or transfer them, are to apply to the magistrate of the zillah for a written authority for that purpose. The magistrates shall cause this section to be subjoined to all the written authorities which they may grant for the building or using the boats in question, and the sanction for the sale or transfer of such boats shall be indorsed on the original authority for building or using them."

The rules prescribed in Regulation 11, 1806, for facilitating the progress of military detachments through the Company's provinces, were stated, under a distinct head, in the third volume of this *Analysis*.<sup>1</sup> The following rule for affording assistance to individuals, when travelling through the country,

Artificers employed in repairing or building such boats to be apprehended; and name of proprietor of the village to be reported to the magistrate.

Description of the prohibited boats.

Cases in which the magistrates are to seize and confiscate prohibited boats. Proprietors of land allowing prohibited boats to be built or repaired in their estates without due authority, to forfeit the village in which they may be built or repaired. Punishment for artificers building or repairing boats, the building or using of which may not have been authorized by the magistrate.

Magistrates empowered to grant written licences for building, using, or transferring prohibited boats under certain restrictions.

Rules in R. 11, 1806, for facilitating progress of military detachments; and for affording assistance to

<sup>1</sup> Page 732.



individuals travelling through the country, who may require aid from the police officers.

and requiring aid from the police officers, was also enacted in Section 8, of the same regulation :—“ Whenever any military officer, not commanding nor proceeding with a corps, or detachment of troops, or any other person, (whether European or native) not restricted by Government from passing through the country, may be proceeding within any part of the Company's provinces, either on the public service, or on his private affairs, and shall be in need of assistance, during his route, to enable him to prosecute his journey, he shall be at liberty to apply to the nearest local officer of police, to aid him in providing any requisite bearers, coolies, boatmen, carts, or bullocks, or any necessary supplies of provisions, or other articles. On receiving an application of the above nature, the police officer, to whom it may be made, shall furnish the aid required, or cause it to be furnished by the proper person or persons ; provided that a sufficient number of persons, who have been accustomed to act as bearers, coolies, or boatmen, or the requisite number of carts and bullocks, not exclusively appropriated to the purposes of agriculture, and occasionally let for hire, can be procured within his jurisdiction. But all police officers are strictly forbidden, under pain of dismissal from office, (under the rules prescribed by Regulation 5, 1804) on applications of the above nature, to compel any persons not accustomed to act as bearers, coolies, or boatmen, to serve on such occasions, or to furnish a traveller, or cause him to be furnished, with bullocks or carts, kept for private use, and not for hire, or exclusively appropriated to the purposes of agriculture. Persons so employed, and the persons in charge of carts and bullocks so provided, shall be at liberty to return from the first police station in the next zillah, unless a voluntary engagement to the contrary may be entered into by such persons. The police officers are further enjoined to be careful that a proper compensation for the bearers, coolies, boatmen, carts, or bullocks, employed, and a just price for the provisions or other articles provided, be secured to the persons entitled thereto. For this purpose, the police officers are authorized to adjust the rate of hire to be paid for the bearers, coolies, boatmen, carts, or bullocks, required, and the price of any articles provided ; as well as to demand, that the whole, or a part, according to the circumstances of the case, be paid in advance. Should any traveller refuse to comply with the adjustment or demand so made by a police officer, he will not be entitled to any assistance from the officers of Government under this regulation.”

But the above rules have been modified by R. 3, 1820. Preamble to that regulation.

But the authority vested by Regulation 11, 1806, in the collectors and their native officers, and in the magistrates and their police officers, to assist in procuring coolies for the purpose of facilitating the march of detachments of troops, or the progress of individual travellers, having operated to encourage the injurious practice, of forcibly pressing certain classes of the inhabitants of the towns and villages, under the denomination of begarees or coolies, for the purpose of carrying baggage or other loads from stage to stage, or from village to village ; the Governor General in Council deemed it expedient to adopt measures for the entire suppression of this practice ; and the following rules were accordingly enacted in Regulation 3, 1820 :—§ 2. “ Such part of the provisions of Regulation 11, 1806, as authorize the collectors and their native officers, or the magistrates and their police officers, to give their official aid in procuring coolies for the purpose of facilitating the march of troops, or the progress of civil and military officers or other individuals travelling through the country, either on the public service or on their private affairs, is hereby rescinded.” § 3. “ The practice of pressing or compelling individuals, whether under the denomination of coolies, begarees, or any other denomination, to carry burthens either for the public service or for the convenience of private individuals, is hereby positively prohibited ; and the several magistrates and joint magistrates are required to adopt all legal means

Section 2. Part of the provisions of R. 11, 1806, rescinded.

Section 3. The practice of pressing begarees prohibited. And the magistrates enjoined to put

in their power to put an entire stop to the practice in question, by enquiring fully into all complaints which may be brought before them, and by subjecting persons regularly convicted of the offence, to such penalties as, on a consideration of the circumstances of the case, may appear to be proper, and consistent with the powers vested in the magistrates, by the general regulations.”

In a note to a preceding section of this Analysis,<sup>1</sup> reference was made to the printed circular orders of the nizamat adawlut, which have been issued, with the sanction of Government, to the zillah and city magistrates, for their guidance, and that of the native police officers acting under them, concerning the practice, still prevalent in some part of the Company's provinces, but particularly in Bengal, of burning Hindoo widows, (under the common designation of *Sutties*) either with the bodies of their deceased husbands, in which case the rite is denominated *Sahamarana*, or without the body, but with some relics, of the deceased, when the ceremony is distinguished by the title of *Anoomarana*. The circular orders of the nizamat adawlut, on this subject, were communicated in a letter from their register to the courts of circuit, dated the 29th April, 1813; and in a second letter from the register, addressed to the magistrates, on the 4th January, 1815; accompanied by the papers mentioned in these letters respectively, as follows:—

a stop to the practice by all legal means in their power.

Notice of circular orders of the nizamat adawlut to the magistrates and police officers, on the practice of burning Hindoo widows, as *Sutties*.

Dates of orders circulated on this subject.

1. *Letter from the Register of the Nizamut Adawlut, to the Courts of Circuit, dated April 29, 1813.*

“I am directed by the court of nizamat adawlut, to transmit to you the unmentioned papers:—

‘1st. Copy of a letter from the Chief Secretary to Government, dated 5th December last, communicating the sentiments and orders of Government, on a reference from the court relative to the practice of Hindoo women burning themselves on the funeral piles of their deceased husbands, to be transmitted to the several magistrates in your division, for their information and future guidance.

‘2dly. Copy of the instructions in the Persian and Bengalee<sup>2</sup> languages, with a translation thereof in English, prepared by the court, in pursuance of the desire expressed in the concluding paragraph of the above letter, and since approved by Government, to be also forwarded to the several magistrates, and by them circulated to the whole of the police officers under their authority.’

“In forwarding these papers to the different magistrates, you are requested to inform them, that the court rely on their observing the utmost attention and circumspection in carrying the present orders of Government into effect; and that they will exercise a vigilant control over the conduct of their police officers, with a view to enforce a strict and faithful performance, on their part, of the delicate and important duties committed to their trust.”

*Letter from the Chief Secretary of Government, to the Register of the Nizamut Adawlut, dated 5th December, 1812.*

“I am directed by the Right Honorable the Governor General in Council to acknowledge the receipt of a letter from you, dated the 3d September last, with its inclosures, respecting the practice which prevails among Hindoo women, of burning themselves on the funeral piles of their deceased husbands.

Letter from register of the nizamat adawlut to the courts of circuit, April 29, 1813.

Rules for the conduct of magistrates and police officers respecting the practice of Hindoo women burning themselves on the funeral piles of their husbands.

Letter from the Chief Secretary of Government to the Register of the nizamat

<sup>1</sup> Section II. of the *Second Part* of the present volume, page 315

<sup>2</sup> Hindoostanee for Bareilly, Benares, and Patna.

adawlut, under date the 6th December, 1812.

His Lordship in Council has likewise had under his consideration your predecessor's letter of the 5th June, 1805, together with the papers mentioned to accompany it on the same subject.

"The nizamat adawlut is sensible that it is a fundamental principle of the British Government, to allow the most complete toleration in matters of religion, to all classes of its native subjects. It is stated in the answer delivered by the pundits, to the interrogatories referred to them by the court, in the month of March, 1805, that every woman of the four casts (Brahmin, Kheytry, Bues, and Soodur) is permitted to burn herself with the body of her husband (except in certain cases which will be more particularly noticed in a subsequent part of this letter), and that the performance of this awful ceremony will contribute essentially both to her own happiness and to that of her deceased husband, in a future state. The practice, generally speaking, being thus recognized and encouraged by the doctrines of the Hindoo religion, it appears evident that the course which the British Government should follow, according to the principle of religious toleration already noticed, is to allow the practice in those cases in which it is countenanced by their religion, and to prevent it in others, in which it is by the same authority prohibited.

"To use the terms of the answer of the pundits, "no woman having infant children, or being in a state of pregnancy or uncleanness, or under the age of puberty, is permitted to burn with her husband, with the following exception, viz. that if a woman, having infant children, can provide for their support through the means of another person, she is permitted to burn." It is further stated in the answer of the pundits, that "it is contrary to law, as well as to the usage of the country, to cause any woman to burn herself against her wish, by administering drugs to stupify or intoxicate her." The Governor General in Council accordingly conceives, that the interposition of the public officers, in cases of this nature, should be confined to the following points: 1st, To preclude, as far as possible, all compulsory means towards Hindoo women on the part of their relatives, of Brahmins, or others, in order to cause them to burn themselves. 2dly, To prevent the criminal use of intoxicating drugs or liquors for the accomplishment of that object. 3dly, To ascertain whether the women have attained the age, as fixed by the Hindoo law, at which they are permitted to burn themselves. 4thly, To enquire, as far as the nature of the case will properly permit, whether they are in a state of pregnancy; and 5thly, To prevent the ceremony from proceeding in cases in which on any of the above grounds, it may be repugnant to the principles of the Hindoo law.

"With respect to the practical measures which should be adopted, with the view of giving effect to the present intentions of Government, the instructions proposed to be issued to the magistrates, and through them to the darogahs and other officers of police, appear to his Lordship in Council well adapted to the purpose. Those instructions are here transcribed, in order to bring the whole subject under one point of view:—

"That the magistrates shall direct the police officers under their authority, to use their utmost care to obtain the earliest information, whenever it is intended to burn a woman with the body of her husband. That the police officers be directed to take immediate measures, on receipt of such information, either by repairing in person to the place where the woman may be, or by deputing one of the police officers under them, to ascertain the circumstances, and particularly the age of the woman, and whether her intention of burning herself be entirely voluntary. In the event of the declaration having been forced from her, or of its being retracted by her, or of her being desirous of retracting it, or of her being found to be in a state of intoxication or stupefaction, as also in the case of her youth, or her being in a state of

pregnancy, which would render the intended act illegal, it will be the duty of the police officer to take the necessary measures to prevent her being burned with her husband's body, apprising the relations or other persons concerned, that they will be dealt with as criminals if they take further steps towards the effecting of their criminal and illegal design. Should no circumstances occur, to require his immediate interference, he shall nevertheless continue his vigilance, and in the event of any compulsion being subsequently used, or drugs administered, producing intoxication or stupefaction, it will be his duty, by all means in his power, immediately to stop so criminal a proceeding, and prevent its accomplishment. The officers in charge of the police, will include in their monthly report to the magistrate, every instance which may occur within their respective jurisdictions, of a woman burning herself; and will separately report their proceedings in every instance in which they may interfere for the prevention of it, immediately after the case shall have occurred. The magistrates shall give particular attention to enforce a strict observance of these instructions by the police officers under their authority.'

"In communicating the present orders of Government to the different magistrates, the Governor General in Council requests that the nizamat adawlut will impress upon them the indispensable obligation of explaining carefully, on all suitable occasions, to persons of the Hindoo persuasion, that nothing is farther from the intention of Government than to infringe any recognized tenet of their religion, (as has been fully stated in the preceding part of this letter) and that its only object is to restrain the use of arts and practices not less repugnant to the doctrines of their own persuasion than revolting to the general dictates of humanity. In order to prevent misconception, the Governor General in Council requests that the nizamat adawlut will direct one of their officers to prepare in the Persian, Hindoostanee and Bengal languages, a draught of the instructions which should be issued by the magistrates to the native officers of police, conformably to the tenor of this letter, specifying of course the age at which women, according to the principles of Hindoo law, are permitted to burn themselves, and that they will submit the draught, with translation of it in the English language, when prepared, for the approval of Government."

*Draught of Directions, to be issued by the Magistrates, to the Police Darogahs.*

"Whereas it has appeared, that during the ceremony denominated 'Suttee,' (at which Hindoo women burn themselves) certain acts have been occasionally committed in direct opposition to the rules laid down in the religious institutes of the Hindoos, by which that practice is authorised and forbidden in particular cases; as for instance, at several places, pregnant women and girls not yet arrived at their full age, have been burnt alive; and people, after having intoxicated women, by administering intoxicating substances, have burnt them without their assent, whilst insensible; and, in as much as this conduct is contrary to the *Shasters*, and perfectly inconsistent with every principle of humanity, (it appearing, from the expositions of the Hindoo law delivered by pundits, that the burning a woman pregnant, or one having a child of tender years, or a girl not yet arrived at full age, is expressly forbidden in the *Shasters*; and also that the intoxicating a woman for the purpose of burning her, and the burning one without her assent, or against her will, is highly illegal and contrary to established usage,) the police darogahs are hereby accordingly, under the sanction of Government, strictly enjoined to use the utmost care, and make every effort to prevent the for-

Draught of directions to be issued by the magistrates, to the police darogahs

bidden practices abovementioned, from taking place within the limits of their thannahs ; and they are further required on all occasions, immediately on receiving intelligence that this ceremony is likely to occur, either themselves to proceed to the spot, or send their mohurir or jemadar, accompanied by a burkundaz of the Hindoo religion, to learn of the woman who is to be burnt, whether she has given her assent, and ascertain the other particulars abovementioned, relative to her age, &c. &c. In the event of the female who is going to be burnt, being less than sixteen years of age, or there being signs of her pregnancy, or on her declaring herself in that situation, or should the people be preparing to burn her after having intoxicated her without her assent, or against her will, (the burning a woman under any of these circumstances, being in direct opposition to what is enjoined in the *Shasters*, and manifestly an act of illegal violence,) it will be then their duty to prevent the ceremony thus forbidden, and contrary to established usage, from taking place, and require those prepared to perform it, to refrain from so doing : also to explain to them, that in the event of their persisting to commit an act forbidden, they would involve themselves in a crime, and become subject to retribution and punishment. But in the case of the woman being of full age, and no other impediment existing, they will nevertheless remain on the spot, and not allow the most minute particular to escape observation. And in the case of people preparing to burn a woman by compulsion, or after having made her insensible by administering spirituous liquors or narcotic drugs, it will be then their duty to exert themselves in restraining them, and at the same time to let them know, that it is not the intention of the Government to check or forbid any act authorized by the tenets of the religion of the inhabitants of their dominions, or even to require that any express leave or permission be required previously to the performance of the act of Suttee ; and the police officers are not to interfere or prevent any such act from taking place. And lastly, it will be their duty to transmit immediately, for the information of the magistrate, a full detail of any measures which they may have adopted on this subject, and also on every occasion when, within the limits of their thannahs, this ceremony of 'Suttee' may take place, the same being lawfully conducted, they will insert it in the monthly reports."

2. *Letter from the Register of the Nizamut Adawlut, to the zillah and city Magistrates, dated January 4, 1815.*

Additional rules for the conduct of magistrates and police officers, respecting the Hindoo custom of Suttee.

"In addition to the instructions for your guidance, and that of your police officers, relative to the Hindoo custom of *Suttee*, which were issued through the court of circuit on the 29th April, 1813, I am directed by the court of nizamut adawlut to transmit the following papers :—

'No. 1. Copy of a letter from the court of nizamut adawlut to his Excellency the Vice President in Council, dated the 14th September, 1814.

'No. 2. Copy of a letter from the Chief Secretary to the Government, in answer to the above, dated the 4th October.

'No. 3. Instructions to the police darogahs, in the English, Persian, Bengalee,<sup>1</sup> and Sanscrit languages, prepared in conformity with the desire of his Excellency in Council.

'Nos. 4, 5, and 6. Sanscrit copies, with Persian, Bengalee,<sup>2</sup> and English translations, of the three Bewastahs of the pundits of the sudder dewanny adawlut, referred to in those instructions.'

<sup>1</sup> Add Hindoostanee for Patna, Benares, and Bareilly.

<sup>2</sup> Add ditto ditto.

" 2. The court of nizamat adawlut desire, that you will furnish each of the police darogahs, in your jurisdiction, with written instructions, under your official seal and signature, corresponding with No. 3, as well as with copies of the several bewastahs, and their respective translations in the native languages, included in Nos. 4, 5, and 6.

" You are further desired to observe, with the most careful attention, the principle adverted to in the 9th paragraph of the court's letter, No. 1, and in the 2d paragraph of the Chief Secretary's letter, No. 2, as well as to require and enforce the most strict observance by your police officers.

" Those officers having been directed, in the instructions issued on the 29th April, 1813, to insert in their monthly reports every instance of a *Suttee* taking place within their respective thannahs; and the court of nizamat adawlut being desirous of ascertaining the actual number of women burnt on the funeral piles of their husbands from year to year, you are desired to transmit, through the court of circuit, an annual report, corresponding with the accompanying form, No. 7, as early as practicable, after the close of the present and each succeeding English year."

(No. 1.)

*From the Court of Nizamut Adawlut, to his Excellency the Vice President in Council, 14th September, 1814.*

" We have the honor to submit to your Excellency in Council, the following papers :—

' No. 1. Copy of a letter from the late magistrate of Burdwan, dated the 28th October, 1813, stating the case of a woman, who was burnt on the funeral pile of her deceased husband, although she had a child only two and a half years of age, and notwithstanding the prohibition of the police officers.

' No. 2. Copy of a letter written in answer to the magistrate, by order of the nizamat adawlut, on the 9th December, 1813.

' No. 3. Copy of a further letter from the late magistrate of Burdwan, dated the 18th December, 1813, stating the construction given to the instructions to police darogahs, which were approved by the Governor General in Council, on the 17th April, 1813, and issued by the nizamat adawlut on the 29th of that month, with a copy of the Chief Secretary's letter, under date the 5th December, 1812, and a circular letter to the courts of circuit, from the register of the nizamat adawlut, of which a copy is submitted, No. 4.'

" Par. 2. Mr. Bayley having reported, that under the construction which the magistrate and his police officers had put upon the instructions circulated on the 29th April, 1813, as meant to prevent the burning of women having infant children, with the other forbidden practices therein mentioned, since the circulation of those instructions, the official interference of the police officers in the district of Burdwan, had prevented the sacrifice of five women, ' four of whom were prohibited from burning on the sole ground of their having infant children ;' adding, ' the practical operation of this single head of the instructions of the court, having been already attended with the preservation of the lives of four women in this district, and not perceiving any general symptoms of jealousy, tumult, or opposition, to the interference of the police officers on these occasions, I confess that I should feel deep regret, if the court were to annul an order, which has already produced such beneficial effects, and which is so entirely consonant to those principles of humanity by which the British Government in India is ad-

Letter from  
the nizamat  
adawlut to the  
Vice President  
in Council,  
dated 14th  
September,  
1814.

ministered ;" we considered it proper (on the 23d December last) to call upon the pundits of the court "for a full exposition of the Hindoo law, with respect to women having infant children burning themselves on the funeral piles of their deceased husbands ; stating particularly whether the restriction against the performance of the ceremony be confined to cases of women having an infant at the breast, or whether it extends to other children ; and if so, to what age it is limited."

"Par. 3. From the answer of the pundits, of which we have now the honor to submit a translation (No. 5), it appears that by the Hindoo law 'a woman, having a child under three years of age, and whose nurture by another person cannot be provided for, is inhibited from becoming a Sutte.'"

"4. Among other authorities cited by the pundits, in support of this exposition of the Hindoo law, it appears to be fully established by a text from *Vrihaspatee*, importing that a 'woman having a child, who is not a *Bala*, viz. has not attained his third year, can, on no account, abandon the nurture of her child, and become a Sutte.'

"5. Another text from *Vrihaspatee*, is cited in the digest of Hindoo law, translated by Mr. H. Colebrooke, book iv, chapter iii, 'On the duties of a faithful widow,' text cxxviii, and is as follows : 'The mother of an infant child may not relinquish the care of her infant to ascend the pile ; nor may a woman in her courses ; nor one who lately brought forth a child, burn herself with her husband ; a pregnant widow also must preserve the child.' The commentator (*Jagannatha*) adds on the authority of *Raghoonandana*, 'But if the infant can be nurtured by any other person, in that case, the mother is entitled to follow her deceased husband.' And with respect to the prohibition after child birth, it is declared, on the authority of a further text, 'to last twenty nights after bearing a son, and a month after bearing a daughter.'

"6. In the former Bewastah of the pundits of the sudder dewanny adawlut, a translation of which was submitted to Government on the 5th June, 1805, and which formed the basis of the instructions issued on the 29th April, 1813, it is stated, 'Every woman of the four casts, (Brahmin, Kheetry, Bues, and Soodur,) is permitted to burn herself with the body of her husband, provided she has not infant children, nor is pregnant, nor in a state of uncleanness, nor under the age of puberty, in any of which cases, she is not allowed to burn herself with her husband's body. But a woman, who has infant children, and can procure another person to undertake the charge of bringing them up, is permitted to burn. It is contrary to law as well as to the usage of the country, to cause any woman to burn herself against her wish, by administering drugs to stupify or intoxicate her.'

"7. The substance of this Bewastah (with an exception to the disqualification from uncleanness) was stated in the instructions to the police officers, approved by Government on the 17th April, 1813 ; but the cases in which they are expressly directed 'to prevent the ceremony,' are only 'in the event of the female, who is going to be burnt, being less than sixteen years of age, or there being signs of her pregnancy ; or her declaring herself in that situation ; or should the people be preparing to burn her after having intoxicated her, without her assent, or against her will.'

"8. In the Chief Secretary's letter of the 5th December, 1812, (which was communicated to the several magistrates for their information and guidance) after noticing it as 'a fundamental principle of the British Government, to allow the most complete toleration in matters of religion, to all classes of its native subjects ;' and the Bewastah of the pundits, stating under what exceptions a woman is permitted by the Hindoo law to burn herself with the body of her husband, it is remarked, that 'the practice, generally speaking,

being thus recognized and encouraged by the doctrines of the Hindoo religion, it appears evident that the course which the British Government should follow, according to the principle of religious toleration already noticed, is to allow the practice in those cases in which it is countenanced by their religion, and to prevent it in others, in which it is by the same authority prohibited."

"9. It appearing to be in strict conformity with this rule, that a Hindoo woman, having a child within three years of age, should not be allowed to burn herself with the body of her deceased husband, unless some person will undertake to provide a suitable maintenance for the child, we beg leave to recommend that the magistrates and police officers be furnished with precise instructions to this effect.

"10. In pursuance of the same principle, and as the most unexceptionable mode of carrying into effect the declared intentions of Government, we further beg leave to suggest that copies of the Bewastahs on the subject, delivered by the Hindoo law officers of the sudder dewanny adawlut, be transmitted to the several magistrates, for their information and that of their police officers, with directions to be guided, on all occasions, by the general principle declared in the Chief Secretary's letter of the 17th April, 1813, viz. "to allow the practice in those cases in which it is countenanced by the Hindoo religion and law; and to prevent it in others, in which it is by the same authority prohibited.

"11. The court of nizamat adawlut, have indeed acted upon this principle in two cases referred to them; after consulting the Hindoo law officers, (as stated in the accompanying papers, No. 6 and 7,) the one being that of a woman, in the Poornea district, who, at her own request, was buried alive with her deceased husband, a Sunjoogee; the other that of a Brahminee widow in Bundelcund, who wished to burn herself upon the sword of her husband, after he had been dead seventeen years;—The former practice was declared by the pundits to be legal, the latter illegal, in the particular instances referred to; and the magistrates were instructed accordingly. But in the present instance the question referred by the late magistrate of Burdwan, being immediately connected with the letter and meaning of the instructions, approved by Government, on the 17th April, 1813, we have considered it proper to submit this report, for the sentiments and orders of your Excellency in Council."

(No. 2.)

*From the Chief Secretary of Government, to the Register of the Nizamat Adawlut, 4th October, 1814.*

"I am directed by the Honorable the Vice President in Council to acknowledge the receipt of a letter from the nizamat adawlut, dated the 14th ultimo, with its enclosures."

"2. The enquiries made by the nizamat adawlut, seem fully to establish the point that women having children under a certain age, are prohibited from burning themselves on the funeral piles of their husbands.—On the principle therefore stated in the 9th paragraph of the Court's letter, (a principle on which their attention appears to be justly fixed, and which should in fact never be lost sight of,) His Excellency in Council is of opinion, that orders should be issued to the several magistrates, directing them to prevent Hindoo women from burning themselves in the case above noticed, in common with others already prohibited in pursuance of the doctrines of the Hindoo religion. As too much circumspection however cannot be observed in matters

*Letter from the Chief Secretary to the Register of the nizamat adawlut, 4th October, 1814.*



of this nature, the Vice President in Council requests that the Court will cause a copy of the instructions which should be issued through the magistrates to the police darogahs, on this subject, to be prepared in their register's office, in the English, Persian, and Sanscrit languages, and that they will forward a copy of them to Government for its information."

(No. 3.)

*Draught of Instructions to be issued by the Magistrates, to the Police Darogahs.*

Draught of instructions to be issued by the magistrates, to the police darogahs.

"In addition to the instructions which have been already issued to you, by order of Government, relative to the Hindoo rite of Suttee, or the practice of women burning themselves on the funeral pile of their husbands, you are hereby furnished with copies and translations of three Bewastahs, delivered by the pundits attached to the court of sudder dewanny adawlut, in answer to questions put to them at different times, with a view to ascertain the provisions of the *Shaster* or Hindoo law, upon this subject. It being a fundamental principle of the British Government, to allow the most complete toleration in matters of religion to all classes of its native subjects, whilst at the same time justice and humanity forbid that a practice attended with the destruction of human life, and often productive of calamitous consequences to the children of the deceased, should be promoted or permitted beyond the extent of the rules prescribed for it in the Hindoo law; you are hereby strictly enjoined to make known these rules, as stated in the accompanying Bewastahs of the pundits of the sudder dewanny adawlut, and the books of the *Shaster* therein cited, whenever a woman may be desirous of performing the Suttee within your division, and after proceeding yourself to the spot, or sending a mohurir or your jemadar with a Hindoo burkundaz, as directed in your former instructions, are to allow or prevent the proposed Suttee, according as it may appear to be conformable or not, to the provisions of the *Shaster* applicable to the circumstances of the case. You will particularly observe from the Bewastahs now transmitted, that a Hindoo woman, having a child within three years of age, is not permitted by the *Shaster* to burn herself with the body of her deceased husband, unless some person will undertake to provide a suitable maintenance for the child; and whenever a person may undertake to do this, you will be careful to see that a written engagement in duplicate on stamp paper, and according to the following form, is entered into, and duly attested; and leaving one copy in the possession of the child's nearest of kin, or other proper person on the spot, will transmit the other copy, with your report on the case, for the information of the magistrate. You will further observe, from one of the accompanying Bewastahs, that the wife of a Brahmin is positively forbidden by the *Shaster* to burn herself, except on the funeral pile of her husband."

*Form of Engagement to be taken in pursuance of the above Instructions.*

Engagement to be taken in pursuance of above instructions.

"It being prohibited by the *Shasters* that the ceremony of Suttee should be performed by a woman having an infant under three years of age, unless some person will undertake to provide suitable maintenance for such child; and being consequently prevented from burning herself with the body of her late husband; with the view of removing the above legal objection, I do hereby voluntarily engage, to maintain, educate, and support the

child or children of the said \_\_\_\_\_, in a manner suitable to their rank and situation in life, and my ability, and to neglect none of the duties which are incumbent on a father towards his own children.

"In failure whereof, I further engage to make good such sum as the magistrate of the district, on a consideration of all the circumstances of the case, shall judge it proper to direct."

(No. 4.)

*Bewastah of the Pundits of Sudder Dewanny Adawlut.*

"Having duly considered the question proposed by the court, I now answer it to the best of my knowledge."

"Every woman of the four casts (Brahmin, Kheytry, Bues, and Soodur) is permitted to burn herself with the body of her husband; provided she has not infant children, nor is pregnant, nor in a state of uncleanness, nor under the age of puberty; in any of which cases she is not allowed to burn herself with her husband's body. But a woman who has infant children, and can procure another person to undertake the charge of bringing them up, is permitted to burn. It is contrary to law, as well as to the usage of the country, to cause any woman to burn herself against her wish by administering drugs to stupify or intoxicate her. When women burn themselves they pronounce the Sunkulp and perform other prescribed ceremonies previously to burning.—This rests upon the authority of Angaroo, Beas and Burusputtee Moonee. There are three millions and a half of hairs upon the human body, and every woman who burns herself with the body of her husband, will reside with him in heaven during a like number of years. In the same manner as a snake-catcher drags a snake from his hole, so does a woman who burns herself, draw her husband out of hell, and she afterwards resides with him in heaven. The exceptions above cited respecting women in a state of pregnancy, uncleanness, and adolescence, were communicated by Oorub and others to the mother of Sugur Raja. No woman having infant children, or being in a state of pregnancy, or uncleanness, or under the age of puberty, is permitted to burn with her husband, with the following exception, viz. that of a woman having infant children, who can provide for their support through the means of another person, she is permitted to burn."

Bewastah or exposition of the Shaster by the pundits of the sudder dewanny adawlut.

*Second Bewastah of the Pundits of Sudder Dewanny Adawlut.*

"If any woman declares her intention of burning, but afterwards recedes from her declaration, without having pronounced the Sunkulp, and performed other ceremonies, she is not enjoined by the Shaster to undergo any *purashehit* or penance, neither is there any thing contained in the law prohibiting her relations from associating with her. But if a woman, after pronouncing the Sunkulp, and performing other ceremonies, has not courage to proceed to the funeral pile, she may recover her purity by undergoing a severe penance, and her relations may then associate with her. The authority for this is the following passage—"A woman who is prevented by worldly attachments, from ascending the funeral pile, must perform a severe penance before she can purify herself from such an offence."

Second Bewastah.

(No. 5.)

*Answer of the Pundits, to a question submitted by the Magistrate of Bundelcund.*

Answer of the  
pundits, to a  
question sub-  
mitted by the  
magistrates of  
Bundelcund.

"The wife of a Brahmin being positively prohibited (by the *Shaster*) from burning on any funeral pile (*Chiti*) other than that of her husband, is not certainly permitted by the *Shaster*, after a lapse of seventeen years from the period of her husband's death, to take any of his implements, clothes, arms, &c. and burn herself on another (*Chiti*) pile."

"Authorities in support of the above.

"1st. The text of Gautama cited in the *Mitachsara*, and by Debo Booddh, author of a commentary on the institutes of Yajnyawalcya, as well as in other books, viz.—'The wife of a Brahmin must ascend no other pile than that of her husband.' 2d. The text of Oosünti cited in the *Nirnay Sind,dhee* and other books, viz.—'The wife of a Brahmin must ascend no other pile than that of her husband, but for women of other casts, it is even laudable to burn on piles (*Chitis*) other than those of their husbands.'"

(No. 6.)

*Answer of the Pundits, to a question from the Court of Nizamut Adawlut.*

Answer of the  
pundits, to a  
question from  
the nizamut  
adawlut.

"A child is termed 'Bala,' whose age is under that prescribed for the performance of the (*Choorakurun*) i. e. ceremony of shaving the head, perforating the ear, &c. The third year is fixed according to all the authorities as the period for the performance of the (*Choorakurun*) abovementioned ceremony. A woman then, whose child is under three years of age, and whose nurture cannot be provided for by another person, is inhibited from becoming a Suttee."

"The authorities in support of the above are as follow—

"First. The text of Vrid,dhu Satatupu, cited in the *Praschet Bibek*, *Upurarkyu*, and *Nirnay Sind,dhee*—'A child previous to attaining the age prescribed for the performance of the *Choorakurun* is termed 'Bala'; preparatory to its being weaned (or before the age for the *Unnu prasūnū*, food-eating, i. e. giving drink to a child for the first time, generally about six months of age, preparatory to weaning it) 'Sheeshoo'; and until the age for his investiture with the Brahminical thread, he is considered a 'koomar' or youth.' Secondly. The text cited in the *Jotistutwa* and the *Jotisara*, and other books: 'The ceremony of the *Choorakurun* is to be performed in the 3d year according to all the authorities.' Third. A text of Vrihaspati cited in the *Soodhee Tutwa*, and other books: 'A woman having a child who is not a 'Bala,' 'that is, who has not attained his third year, can on no account abandon the nurture of her child and become a Suttee.' Fourth. A text cited in the *Soodhee Tutwa*: 'A woman having a child 'Bala' whose nurture can be provided by another person, is free to become a Suttee.'"

(No. 7.)

*"Form of Annual Report of the Number of Hindoo Women who have burnt themselves on the Funeral Piles of their Husbands, in Zillah during the year*

Form of annual report of Sutties, to be furnished by the magistrates.

Name.	Age.	Cast.	Name and Cast of her Husband.	Date of Burning.	In what police jurisdiction.	Remarks.

N. B.—Any particular circumstances in the report of the police officers which may appear to deserve notice, should be inserted in the column of remarks.

Any instances of women having been prevented by the magistrate or police officers from becoming Sutties, in pursuance of the present or former instructions, should also be stated at the foot of this report, or on a separate paper."

It has already been remarked (in a note to page 316), that the official statements furnished by the magistrates, according to the prescribed form, for the years 1815, 1816, and 1817, exhibited the ascertained number of female immolations in those years as follows—In 1815, 380; in 1816, 442; in 1817, 706. From more recent information, it is understood, that the number, in 1818, exceeded 800. This increase has led to an inference that the interposition of the British Government, as authorized by the foregoing circular orders of the nizamat adawlut, has tended to defeat the object intended by them; the practice meant to be restrained by them, having, on the contrary, been more frequent under their operation. But admitting the fact of an actual increase, it may be accounted for, by the mortality which attended the prevailing disease of *cholera morbus*, in the years 1817, and 1818; and which, by its natural consequences, may have occasioned a greater number of widows. The activity of the police officers, under the directions of the zillah and city magistrates, may also, in this instance, as in many others, have discovered, and brought on record, a greater number of Sutties, without any actual increase in the number of immolations during the two latter years of the period referred to; during the whole of which the same circular orders of the nizamat adawlut were in force; without any addition, or alteration. It may indeed be presumed that the number of widows burnt in each of the years, which have been specified, much exceeded the number ascertained and reported by the police officers; as the relatives of women about to be burnt, were not required, by any regulation or order in force, to give previous notice to the local police officer, or magistrate; and many Sutties, especially such as were irregular, from the age, or condition of the parties, must be supposed to have taken place without the knowledge of the public officers.

Number of ascertained immolations in 1815, 1816, 1817, and 1818

Remarks on increase in the two latter years.

To remedy this material defect in the existing rules, and to provide more effectually for an observance of the restrictions prescribed by the *Shaster*, in the burning of Hindoo widows on the funeral piles of their husbands, or otherwise, the court of nizamat adawlut, in the year 1817, submitted to the Governor General in Council the draught of a proposed regulation, the first

Defect in existing rules, intended to be provided for by a regulation, submitted to Government in the year 1817

clause of which was in the following terms—"Whenever a Hindoo widow, on the death of her husband, may be unwilling to survive him; and be desirous of devoting herself on his funeral pile, by the rite of *Sahamarana*; or, if absent from him, and she be not the wife of a Brahmin, (who is forbidden to ascend a separate pile,) may, on receiving information of his death, desire to perform the rite of *Anoomarana*, in the manner prescribed by the ordinances of the *Shaster*; and her situation may be such as to admit of her becoming a Sutte, under the restrictions contained in the *Shaster*, and declared in this regulation; the principal persons of her own family, or that of her husband, who may be on the spot, if unable to dissuade her from a sacrifice not enjoined as a religious or conjugal duty, but permitted only, under certain circumstances, as a voluntary and optional act; shall cause notice of her intention to be conveyed, as speedily as possible, to the police darogah, or other principal police officer of the jurisdiction in which the widow may reside; or in which it may be intended to perform the rite of *Sahamarana*, or *Anoomarana*; and such rite shall not, on any occasion, be performed or commenced, without the previous knowledge and attendance of the police darogah, or other local police officer; or the attendance of the thannah mohurir, or jemadar; or without allowing full and sufficient time for such attendance after notice given; under penalty of all persons concerned in the irregular act being liable to a criminal prosecution before the zillah or city magistrate; and in cases of an aggravated nature, before the court of circuit."

(Other important provisions in the proposed regulation. But not quoted more at length in this place as they have not yet been enacted.

Preamble to this regulation cited, as showing the principles which have influenced the measures hitherto adopted on this interesting subject.

The proposed regulation, from which the above clause is quoted, contained many other important provisions, for maintaining a strict adherence to the Hindoo law, in cases of Sutties; including one, in particular, to prevent a continuance of the illegal practice of fastening the widow with cords to the pile, or pressing her down with bamboos; for which the pundits have expressly declared there is no authority in the *Shaster*. But as these have not yet been enacted by the Governor General in Council, (though presumed to have been printed, in common with other official documents on the subject, for the use of the House of Commons,) they cannot, with propriety, be quoted more at length in this place. The following preamble only is added, as showing the principles of policy and humanity which have influenced the measures hitherto adopted, with the sanction of the Government of Fort William, and of the Honorable Court of Directors, on this interesting question of British Indian administration, involving the annual sacrifice of many hundreds, if not thousands, of lives, among the most helpless and most pitiable, of our fellow subjects in India.

"It is an invariable principle of the British Government, to protect the whole of its subjects in the free exercise of their religion; and in the performance of their religious ceremonies; as well as to show a just regard to established customs and usages, even in matters not directly connected with religious worship and duties. In pursuance of this fundamental principle, which has uniformly influenced the administration of the British Government in India, the Hindoo inhabitants of Bengal and the other provinces subject to this presidency, have experienced a complete toleration in the performance of the rites of *Sahamarana*, and *Anoomarana*, by which, under certain restrictions prescribed in the *Shaster*, a faithful widow, unwilling to survive her husband, and desirous of becoming a Sutte on his death, is permitted (though not enjoined) to burn on his funeral pile, if present at the time of his obsequies, and not prevented by any legal impediment; or if

<sup>1</sup> Under the Vote of the House, upon Mr. Buxton's Motion, 20th May, 1821. See *Asiatic Journal* for September, 1821, under the head of *Imperial Parliament*.

absent, on receiving information of his demise, and not within any legal inhibition, to burn on a separate funeral pile, with the turband, sandals, or some other relic, of the deceased. The suicide, in these cases, is not indeed a religious act; nor has it the sanction of *Menu*, and other ancient legislators revered by the Hindoos. On the contrary, *Menu* declares that "a virtuous wife ascends to heaven, though she have no child, if, after the decease of her lord, she devote herself to pious austerity."<sup>1</sup> The texts of *Yama* and *Cátyáyana*, quoted in the *Viváda Bhungáráva*, (or Digest of Hindoo law) "On the duties of widows choosing to survive their husbands," are also to the same effect.<sup>2</sup> And *Vrihaspati* adds "Whether she ascend the pile, or survive for the benefit of her husband, she is a faithful wife." It is moreover the evident duty of a mother to nourish her children, who may require her maternal cares; and accordingly it is further declared by *Vrihaspati*,<sup>3</sup> that "the mother of an infant child may not relinquish the care of her infant to ascend the pile." It appears also, that some authors have condemned the suicide of widows altogether, as coming within a general prohibition against the wilful abridgment of human life, and proceeding from a desire of future sensual enjoyment in preference to the more pure and perfect state of beatitude promised for a life of virtue and piety. The practice thus condemned, however, though relinquished in Tinhoot, and some other districts, having continued to prevail, in a greater or less degree, in different parts of the country, especially in the province of Bengal, the Government, actuated by its general principle of toleration, however anxious for the voluntary discontinuance of a custom so repugnant to the feelings of humanity, deemed it proper, after ascertaining from the pundits of the sudder dewanny adawlut, the rules and restrictions prescribed by the *Shaster*, on the subject, to authorize the interference of the public officers so far only as appeared absolutely necessary under experience of gross abuses and irregularities, for maintaining a more strict observance of the ordinances of the Hindoo law. Those ordinances require that the sacrifice be, in all instances, perfectly voluntary, that the widow be of a competent age to judge and choose in a matter of so much consequence to herself and children; that no drugs be administered to stupefy or intoxicate her; and that no means of restraint be used to prevent her quitting the pile, if her resolution should fail after having ascended it; but on the contrary, that she ought to be lifted off the pile, in such cases, and allowed to return to her family; who are forbidden to maltreat her, or to refuse to associate with her, on this account; a penance only being enjoined when she may retract her intention, after pronouncing the *Sunkulp*, and performing other ceremonies. It is further expressly declared in the *Shaster*, that women in a state of pregnancy, or impurity, as well as those having infant children, shall not be permitted to burn; though a single commentator on the text of *Vrihaspati*, before cited, has expressed his opinion, that "if the infant can be nursed by any other person, in that case the mother is entitled to follow her deceased husband." Further, the wife of a Brahmin is prohibited by the *Shaster* from burning, on any funeral pile, (*Chiti*) except that of her husband; and if the widow of a person of any other tribe, who may be absent from her husband, at the time of his death, omit to perform the rite of *Anoomarana*, on receiving information of his decease, she is not permitted to do it at any subsequent period. But it came to the knowledge of Government, that frequent instances occurred of women being burnt in direct opposition to these rules and restrictions; some in a state of pregnancy, or of so tender an age that they could not exercise a sound discretion; others stu-

<sup>1</sup> Text cxli. cited in the Digest of Hindoo law, book iv. ch. iii. sec. ii.

<sup>2</sup> Texts cxliv. and cxlv.

<sup>3</sup> Text cxxxii.

<sup>4</sup> Text cxviii.

pified or intoxicated, so that they knew not what they were doing ; and many were prevented from retracting a hasty resolution, by being tied down with cords, or pressed with bamboos, to the pile, so that they could not avail themselves of the liberty expressly allowed by the *Shaster*. These and other abuses, which had no legal sanction, and violated every principle of justice and humanity, compelled the Government to adopt measures for guarding, as far as possible, against a recurrence of them ; by directing the police officers, on receiving intelligence of an intended Suttee, to repair to the spot, and make such enquiry as might be requisite to ascertain the legality of the act ; as well as to use all practicable means of preventing any compulsion or other irregularity in the performance of it. Circular orders to the magistrates and police officers were accordingly issued for this purpose, by the court of nizamat adawlut, with the sanction of the Governor General in Council, in the months of April, 1813, and January, 1815 ; and Sanscrit copies, with translations in the vernacular languages, of the Bewastahs of the pundits of the sudder dewanny adawlut, were, at the same time, transmitted for full and general information, of the grounds on which the instructions to the police officers were forwarded. The object of these instructions has however been partly frustrated by the omission of the families of persons about to perform the rite of *Sahamarana*, or *Anoomarana*, to give timely notice to the police darogah or other police officer of the jurisdiction ; which has, in many instances, prevented his attendance, and the possibility of ascertaining whether the ordinances of the *Shaster* have been duly observed, or otherwise. It is therefore indispensably necessary to require that previous notice be given to the local police officer, in every instance of an intended Suttee ; and the Governor General in Council has judged it proper to take the occasion of promulgating, by a regulation, the rules established for the guidance of the magistrates and police officers, in maintaining a strict observance of the provisions of the *Shaster*, relative to the burning of an Hindoo widow, with, or without, the body of her deceased husband ; declaring, at the same time, the substance of the principal restrictions contained in the *Shaster*, as expounded by the pundits of the sudder dewanny adawlut, and others of equal authority."

*Special Rules for Zillah Cuttack ; and Pergunnahs Puttespore, &c.*

Special rules for the police of Cuttack, and of the three pergunnahs formerly dependant thereupon.  
R. 13, 1805.  
Preamble.  
System of police in Cuttack, under the Marhatta government.

Reasons for continuing it. And rules enacted for that purpose, in R. 13, 1805, in modification of R. 6, 1804, § 6.

Special rules have also been enacted for the police of zillah Cuttack and the pergunnahs of Puttespore, Kummardichour, and Bograe, former dependencies of Cuttack, which are now included in zillah Midnapore. When this territory, ceded to the East India Company by the Rajah of Berar, in the year 1803, was under the Marhatta government, the maintenance of the peace was entrusted to certain sirdar pykes, or head-watchmen, called *kandytes*, aided by inferior pykes under their orders, for whose support lands were assigned. The general control of these watchmen was vested in the zemindars, talookdars, and other landholders and farmers of land, within the limits of their respective estates and farms ; excepting instances in which they were deprived of the charge of the police by the Government ; either from inability to perform the duties of it, or for misconduct, or other cause, in which case the exclusive charge of the police was usually given to the *kandytes* abovementioned. This system of police having been found well calculated for the prevention of crimes, and for maintaining the general tranquillity of the country, the following rules were enacted by Regulation 13, 1805 ; in modification of Section 6, Regulation 4, 1804, whereby the general system

of police established in Bengal, Behar, and Orissa, had been extended to Cuttack ; with a provision, that the zemindars, farmers, and other holders of lands, should continue to perform the same duties as heretofore, and subject to the same responsibility, for the prevention of robberies and other disorders ; and for the maintenance of peace and good order within their respective limits."

§ 4. "*First.* The following rules shall be observed in the appointment of darogahs for the maintenance of the police in the zillah of Cuttack, and in the pergunnahs of Puttespore, Kummardichour, and Bograe. *Second.* In cases in which the zemindars, talookdars, and other landholders, have not been formally divested of the charge of the police within the limits of their respective estates, for misconduct or any other reason, either by the late Marhatta government, or by the board of commissioners for the settlement of the affairs of Cuttack ; such zemindars, talookdars, and other landholders, shall continue, under the responsibility stated in Section 6, Regulation 4, 1804. in charge of the police, according to established usage within their respective estates ; that is, the principal zemindars, talookdars, and other landholders, being proprietors of large estates, shall be constituted darogahs of police, within the limits of their respective possessions ; and the inferior zemindars, talookdars, and other landholders, being proprietors of petty estates, shall be considered to be subordinate officers of police, subject to the abovementioned responsibility, under the immediate authority of darogahs, who shall be selected and appointed for the maintenance of the police in estates or mehals of the latter description. *Third.* In cases in which any of the zemindars, talookdars, and other landholders, have been divested of the charge of the police (as above noticed) within the limits of their respective estates ; one, two, or more kandytes or sirdar pykes, according to the extent of such estates, shall, in conformity to established usage, be vested with the immediate maintenance of the peace, the apprehension of public offenders, and other duties of that description, within the limits of the said estates ; subject nevertheless to the control of darogahs, who shall be appointed for the superintendence of the police and the general control of the conduct of the said kandytes, and all inferior officers of police, within the limits of the authority of the said darogahs respectively. *Fourth.* The darogahs who may be appointed under Clauses Second and Third, of this section, shall receive such salaries as the Governor General in Council may think proper to fix for their support, on a consideration of the labor and responsibility of the offices held by them." § 5. "Certain lands having been assigned by the authority of the late Government, for the maintenance of the said sirdar pykes, and inferior pykes under the control of such sirdars, for the support of the general police of the country, those lands shall be continued to the said sirdar and other pykes, for the purposes to which they have been hitherto appropriated. It is to be understood however, that all officers of that description shall be considered subject to the authority of the darogahs of police, whether zemindars or others, within their respective limits ; and shall be bound to conform to all legal orders, which may be issued to them by such darogahs, conformably to the powers with which the darogahs may be invested. It is further to be understood, that any sirdar or other pyke will be liable to be dispossessed of his lands for any disobedience of orders, neglect of duty, undue violence, or other misconduct ; provided, however, that whenever a magistrate shall be of opinion that any kandyte, or sirdar pyke, ought to be dismissed from his office, or whenever the place of such officer shall become vacant from death, or any other cause, the magistrate shall report the circumstances of the case to the nizamat adawlut, who will pass such orders or

R. 13, 1805, § 4. Rules for appointment of police darogahs.

In what cases the principal landholders to continue in charge of the police, and to be constituted darogahs.

And inferior landholders to be considered subordinate officers of police, under authority of darogahs. In what cases the kandytes, or sirdar pykes, to have charge of the police.

Subject to the control of darogahs.

What salaries to be received by darogahs appointed under this section.

Section 5. Lands assigned for maintenance of pykes to be continued.

But all persons holding such land subject to authority of darogahs of police. In what cases the pykes are liable to be dispossessed of their lands. Magistrate how to proceed in such cases.



Vacancies among inferior pykes how to be supplied.

Section 6. Register of pykes to be formed by police darogahs.

Section 7. Limits of jurisdiction of sirdar and inferior pykes to be fixed by darogahs, under orders from the magistrate.

Section 8. Landholders and farmers of land, not constituted officers of police, to assist in preserving the peace, and apprehending offenders.

Section 9. Landholders suspected of connivance at robbery, or other offence, liable to a criminal prosecution.

Section 10. Collectors of Cuttack and Midnapore to form a register of lands assigned for the support of And to transmit a copy to the board of revenue.

Section 11. Certain descriptions of village watchmen not included in foregoing rules. But left under exclusive control of the landholders, as heretofore.

Section 13. How far the general laws and regulations for criminal justice and police in the province of Bengal, to have force in Cuttack, and three pergunnahs annexed to Zillah Midnapore.

No part of this regulation to extend to certain hill rajahs specified.

the subject, as shall appear to them to be proper, under the general powers vested in them by Regulation 5, 1804;<sup>1</sup> provided likewise, that whenever any vacancy shall occur among the inferior pykes, either from dismissal, death, or otherwise, the places of such pykes shall be supplied by the sirdar pyke, on declaring himself to the magistrate responsible for the conduct of the person recommended by him." § 6. "It shall be the duty of the darogahs of police, whether zemindars or others, under the guidance and instructions of the magistrate, to form a complete register of the sirdar and other pykes, within the limits of the authority of the said darogahs respectively." § 7. "It shall further be the duty of the darogahs of police to ascertain and fix, under the orders of the magistrate, the limits of the local authority of the kandytes or sirdar pykes, and of the inferior officers of police, attached to the said sirdar; so that every part of the province of Cuttack, whether consisting of lands paying revenue to Government, or of lands exempt from the payment of revenue, may receive the protection of the subordinate officers of police, under the directions of the darogahs, and the general control of the magistrate." § 8. "Nothing contained in this regulation shall be construed to exempt the zemindars, talookdars, farmers, and other holders of land, although they be not formally constituted officers of police, from the duty of affording every assistance in the prevention of breaches of the peace, and in the apprehension of public offenders; who are immediately to be delivered into the custody of the nearest officers of police."

§ 9. "Any zemindar, talookdar, or holder of land exempt from revenue, who may be suspected of conniving at any robbery, or other public offence, will be liable to be prosecuted before the criminal courts of the country, and punished on conviction, under the general laws and regulations of the country." § 10. "It shall be the duty of the collectors of Cuttack and Midnapore to form a complete register of the lands assigned for the support of the sirdar and other pykes, specifying the quit-rent payable to the zemindars, talookdars, and other landholders, (if according to established usage, the lands have been hitherto subject to the payment of such quit-rent) and to transmit a copy of the register required to the board of revenue, to be deposited among the records of that board." § 11. "The foregoing rules regarding the sirdar and other pykes, and lands assigned for their support, are not to be considered applicable to certain doosauds, or village watchmen, entertained by the zemindars, talookdars, and other landholders, for the purpose of watching crops, guarding granaries, and other duties of that nature; which officers shall be left under the exclusive control of the zemindars, talookdars, and other landholders, as heretofore." § 13. "All laws and regulations for the maintenance of the police, and for the administration of justice in criminal cases, in the province of Bengal, which have been or shall be enacted, and which shall not be inconsistent with, or repugnant to, the provisions contained in this regulation, and likewise such of the rules contained in Regulation 4, 1804, as are not either specifically or virtually rescinded by the present regulation, shall have full force and effect in the zillah of Cuttack, and in the pergunnahs of Puttaspore, Kummardichour, and Bograe, included in the zillah of Midnapore. Provided however, that no part of this regulation shall be construed, for the present, to extend to the estates of certain hill or jungle rajahs or zemindars, of which the following is a list:—

1 The provisions of this regulation were modified by those of Regulation 8, 1809; and these, as they respect police officers, have been altered by Sections 6, and 7, of Regulation 17, 1816, before cited.

Killah Neelgery,  
 Ditto Bankey,  
 Ditto Joorinoo,  
 Ditto Nersingpore,  
 Ditto Augole,  
 Ditto Toalcherry,  
 Ditto Attgurrh,  
 Ditto Kunjur,  
 Ditto Kindeapara,  
 Ditto Neahgurrh,  
 Ditto Rampore,  
 Ditto Hindole,  
 Ditto Teegereah,  
 Ditto Burrumboh,  
 Ditto Deckenaul,  
 The territory of Mohurbunge.<sup>1</sup>

<sup>1</sup> None of the regulations have been extended to the estates of the hill rajahs mentioned in this section. But an engagement to the following effect (recorded on the proceedings of the nizamat adawlut, under date the 4th February, 1807) has been entered into by them :—

“ART. 1. I will for ever be faithful and obedient to the Honorable East India Company. ART. 2. I will without fail pay to the British Government, at three instalments, as under written, the sum of                      annually, being the amount of my tribute. ART. 3. Should any inhabitant of the territories of the British Government abscond, and take refuge within the boundaries of my rajgee, I will, on his being demanded, immediately seize and send him to the presence. ART. 4. Should any one of the ryots of my rajgee commit any crime within the territories of the British Government, I will, on demand, seize such delinquent and forward him to the presence for examination; and if I should have cause of complaint against a ryot of the British Government, I will not take any authority upon myself to seize him, but will forward information to the presence, and conform to such orders as may be given. ART. 5. Whenever any troops of the Honorable Company shall pass through my territories, I will issue orders to my ryots to use their utmost endeavours to supply the said troops with provisions, &c. at proper prices; and should any one belonging to the British Government, or should any other person with merchandise having an order or passport from the said Government, pass through my rajgee, either by land or water, I will not, on any grounds, or pretence whatever, molest or impede his progress. On the contrary, I will be cautious that his life and property shall receive no injury within my territories. ART. 6. If at any time any rajah or other person in the neighbourhood of my rajgee be disobedient, or offer resistance to the British Government, I will, when called on, without hesitation, send my troops to join those of the British Government, for the purpose of punishing and reducing to obedience the said offender, and these troops, agreeably to the number present, will receive the customary allowance of provisions.”

R. 14, 1807,  
§ 19.

Responsibility of landholders and farmers in the divisions of Bareilly and Benares, for robberies or thefts committed within their respective estates or farms. And for stolen or plundered property brought into their estates, or farms, with their knowledge or connivance. Further provisions in Section 20, of the same regulation; made applicable, in Section 21, to officers of Government employed in the collection of the public revenue; or the rents of estates held khas; or under attachment. R. 2, 1797, § 2, 3; and R. 35, 1803, § 3. Extended, with addition, to conquered provinces by R. 5, 1803, § 14, c. 8. Duties to be performed by landholders and farmers, with assistance of their village watchmen. Penalty for wilful neglect in the performance of such duties. R. 8, 1803, § 1, c. 8. As well as for being concerned, directly or indirectly, in any theft or robbery. Charges of wilful neglect, in the instances stated, how to be proceeded upon, by the magistrate.

*Responsibility of Landholders; and Special Rules for such as are entrusted with the Police.*

The responsibility of landholders and farmers in the province of Benares, and in the ceded and conquered provinces within the divisions of Bareilly and Benares, for robberies or thefts committed within their respective estates or farms, to which they were subject under the tehseeldary system of police in those provinces, is expressly reserved, by Section 19, of Regulation 14, 1807, under the new system established by that regulation. By the same section they are further declared "responsible for the value of any stolen or plundered property proved to have been brought into their estates, or farms, with their knowledge or connivance; and which they may not have caused to be delivered up; or have given timely information respecting it to the local police officer, or the magistrate. All claims upon the landholders and farmers, for the value of such property, are to be instituted, tried, and decided, in the civil courts; subject to the general rules of appeal." The following provisions relative to landholders and farmers of land, in the divisions of Bareilly and Benares, (as far as they are consistent with the general rules already cited from Regulations 9, 1808, 6, 1810, 1, 1811, 3, 1812, and 8, 1814,)' are also still in force, under Section 20, of Regulation 14, 1807; and in Section 21, are declared "equally applicable to all officers of Government, entrusted with, or employed in, the collection of the public revenues; or the rents of estates held khas, or under attachment; it being the duty of every public officer to render any assistance in his power for the support of the police, and the prevention of crimes, or the apprehension of persons by whom they are committed; especially when called upon to aid the established officers of police." "First. Landholders and farmers of land are required, with the assistance of their pykes, chokeedars, pausbauns, and other descriptions of village watchmen, to give at all times their utmost care and vigilance to prevent affrays, assaults, and all other acts of violence and breaches of the peace within their respective estates and farms; as well as to apprehend, and deliver over to the police officers, any persons who may be found in the act of committing a breach of the peace, or whom the village watchmen are required to apprehend, or whom the police officers may require their aid to apprehend, in execution of the duties vested in them. Secondly. Any landholder or farmer of land, who may be convicted of wilful neglect in the instances above referred to, and particularly of neglect to afford his ready and utmost assistance on the requisition of a police officer, in apprehending persons within his estate or farm, who may have committed a breach of the peace; or who may be convicted of having been himself concerned, directly or indirectly, in any theft or robbery, committed within his estate or farm; or having been aiding or abetting therein, or privy to the same; is declared liable to the forfeiture of his estate or farm, or to such fine to Government as may be judged adequate to the circumstances of the case; and is to be proceeded against in the following manner. Thirdly. The charge of wilful neglect, in the instances aforesaid, is to be received and examined into by the magistrate, in the mode prescribed by the regulations, with respect to other charges of a criminal nature; and after hearing the defence of the party accused, with the evidence adduced against him, or in his behalf, if the magistrate shall be of opinion that the charge is not established, he is to pass

judgment of acquittal; with damages to the party, if the complaint shall appear to have been groundless and litigious. If the magistrate shall consider the charge established, he is to record his opinion to this effect; with the punishment he may judge adequate to the case, whether a fine (the amount of which is to be specified) or a forfeiture of the offender's estate or farm (the annual jumma of which is to be in that case specified) and to transmit without delay a copy and translation of his proceedings to the court of nizamat adawlut. *Fourthly.* The nizamat adawlut, on receipt of the magistrate's proceedings, are to pass such order thereupon as they may think proper, on due consideration of the evidence, and all the circumstances of the case; and in all instances wherein they may order a fine to Government, their judgment is to be considered final, and immediately carried into execution by the magistrate, in the same manner as other fines are levied under the existing regulations. But in case the nizamat adawlut shall adjudge a forfeiture of the offender's land or lease, they are, previous to ordering such judgment to be carried into execution, to transmit their proceedings, with those of the magistrate, to the Governor General in Council; who will finally determine whether the judgment of forfeiture shall be put in force, or commuted to a fine, or otherwise; and who, whenever he may order the land or lease of the offender to be forfeited to Government, will at the same time cause the necessary instructions for the future disposal of the land, to be conveyed to the collector, through the board of revenue."

Rule for nizamat adawlut in such cases.

And in what instances the judgment of that court to be reported to Government.

A further provision in Section 16, of Regulation 14, 1807, that nothing therein contained shall preclude the landholders or tehseeldars, in the province of Benares, and in the ceded and conquered provinces within the divisions of Bareilly and Benares, from receiving sunnuds and being employed as ameens of police, under Regulation 12, 1807, is superseded by Section 6, of Regulation 6, 1810; which rescinded such parts of Regulations 12 and 14, 1807, as related to the appointment of ameens of police. But it may be added, that, in Section 16, Regulation 14, 1807, it was provided "if, in any particular tehseeldaries, estates, or farms, the Governor General in Council, on consideration of local or other circumstances, should judge it expedient to postpone the introduction of the general system of police established by Regulation 14, 1807; or any part thereof; or to grant the full powers of a mofussil police darogah to the tehseeldar, landholder, or farmer; or to commit the charge of the police to any other person, as a temporary arrangement; the same may be directed by an order to the magistrate, communicated through the nizamat adawlut."

Provision for employing landholders and tehseeldars, as ameens of police, under R. 12, 1807; rescinded by R. 6, 1810, § 6. But power reserved to Government, in R. 11, 1807, § 16, to postpone, in particular instances, the system of police established by that regulation; or to authorize any partial adoption of it.

The police of the jungle mehals, which were formerly included in zillahs Beerbhoom, Burdwan, and Midnapore, but were formed into a distinct zillah by Section 2, of Regulation 18, 1805, having been successfully entrusted to the zemindars, or managers of zemindaries, in those mehals, either jointly with, or instead of, police darogahs on the part of Government, it was deemed proper to enact, in a regulation, the rules experimentally adopted in the first instance, with the sanction of Government, for this local police; and to provide for the extension of them, in other districts, as far as might be found advisable. The prohibition to landholders in the lower provinces, from entertaining establishments of police officers, was therefore declared by Section 5, of the regulation above noticed, "not to extend to any district included in the jurisdiction of the magistrate of the jungle mehals, the police of which has been, or may be, committed to the zemindar, or to the manager of a zemindary, either with, or without the co-operation of police darogahs, appointed under the provisions of Regulation 22, 1793." It was further declared, in the same section, "that the prohibition contained in Section 2, Regulation 22, 1793, shall not be deemed applicable to any landholder, or

Special rules for the police of the jungle mehals, contained in R. 18, 1805.

With provision for extending them, at the discretion of Government, to other mehals. Section 5. Such mehals excepted from the prohibition to landholders against keeping up police establishments.

Section 6.  
Rules for zemindars and managers of zemindaries, entrusted with charge of the police.

Section 7.  
Zemindars to receive sunnuds from the magistrate. And not to be deprived of them, except for misconduct.

Magistrate how to proceed in such cases.

What establishment of watchmen to be maintained by the zemindars.

List of watchmen and statement of their allowances to be furnished to the magistrates.

Vacancies how to be supplied.

Watchmen and other police officers subject to orders of the magistrates, and how punishable for misconduct.

Village watchmen also subject to police darogahs, where appointed.

And zemindars to support the darogah in all cases.

Zemindars to receive copies of regulations for conduct of police darogahs.

And to observe the same, as far as practicable.

to any farmer or manager of land, whom the Governor General in Council may authorize to entertain an establishment of police officers, whether in jungle mehals, or in any other mehal or district whatever.”<sup>1</sup>

The following rules are prescribed in Section 7, of the regulation above-mentioned, for the zemindars, and managers of zemindaries, entrusted with the charge of the police in the jungle mehals. And the Governor General in Council has reserved to himself the power of extending them, in whole, or in part, to any other mehals, the police of which may be entrusted to a zemindar, or other landholder, or to a farmer, or manager of land. “*First.* Zemindars, entrusted with the police, shall receive sunnuds from the magistrate, under the authority of the Governor General in Council, vesting them with the charge of the police in their respective zemindaries. *Second.* They shall not be deprived of their sunnuds except for misconduct proved to the satisfaction of the Governor General in Council. Whenever the magistrate shall be of opinion that there is ground for removing a zemindar from the charge of the police, he shall report the same through the court of nizamat adawlut, for the final determination of Government, in the mode prescribed with respect to the police darogahs, by Section 10, Regulation 5, 1804.” *Third.* They shall be required to maintain such establishments of pykes or other watchmen, for the maintenance of the police, within their respective zemindaries, as may be fixed by the magistrate, with the approbation of the Governor General in Council. *Fourth.* A list of the persons so employed, with a statement of the allowance in land, or money, received by them respectively, shall be furnished by each zemindar, and shall be deposited in the office of the magistrate. On the death or removal of any of the persons specified in such lists, the zemindar shall fill up the vacancies, but shall immediately report the same to the magistrate. *Fifth.* The pykes and other watchmen, and all persons employed under the zemindar as police officers, shall be subject to the orders of the magistrate, and be punishable for neglect of duty, or other misconduct, either by fine or imprisonment, or by removal from office, or otherwise, according to the nature of the offence, under the general regulations in force. *Sixth.* In zemindaries where police darogahs may have been or may be appointed, under Regulation 22, 1793, all village watchmen, of whatever description, shall also be subject to the orders of the police darogah, as declared in Section 13, of that regulation; and the zemindar shall, in all cases, aid and support the darogah in preserving the peace, preventing the commission of crimes, and apprehending offenders. *Seventh.* The zemindars shall be furnished with copies of Regulation 22, 1793, and any other regulations that may be enacted for the conduct of the police darogahs; and are required to observe the rules contained in them, as far as may be practicable, in the discharge of their duties as chief police

<sup>1</sup> By this provision, and by that before quoted from Section 17, Regulation 14, 1807, for the divisions of Bareilly and Benares, the Governor General in Council can, in all instances, adapt the local police to any circumstances, which may appear to require a special deviation from the general rules in force. And the magistrates of the above divisions are directed by Section 18, Regulation 14, 1807, “to report through the courts of circuit and nizamat adawlut, for the information of the Governor General in Council, any instances within their respective jurisdictions, in which they may think it advisable to adopt any special arrangement; stating fully the circumstances which require it, and the particulars of the arrangement proposed.”

<sup>2</sup> The rule here referred to is superseded by the provisions of Sections 6, and 7, Regulation 16, 1816, with respect to the removal of police darogahs. But these provisions do not extend to zemindars entrusted with the police under express authority from the Governor General in Council.

officers.<sup>1</sup> *Eighth.* The zemindars shall send to the nearest police darogah, or to the magistrate, or to the nearest military detachment under the command of an officer acting in support of the police, (whichever may be most convenient) all persons charged with murder, robbery, or other heinous crime, within twenty-four hours after the party may have been apprehended.

*Ninth.* The zemindars shall be careful to take security (*since altered to recognizances*) from prosecutors and witnesses to appear before the magistrate on a certain day. *Tenth.* In complaints for petty assaults, or abusive language, the zemindars may take razeenamahs, as the darogahs are empowered to do, provided the parties shall deliver such razeenamahs within twenty-four hours after the accused may have appeared at the zemindar's cutcherry. *Eleventh.* The zemindars are authorized and required to apprehend all choars, and other plunderers of whatever description, within the limits of their own zemindaries, while committing a breach of the peace, or passing through their zemindaries after the commission of such an offence.

They may also apprehend, without a written charge, all persons found within their zemindaries, in the act of committing any heinous crime; or with stolen goods in their possession; or against whom a general hue and cry shall have been raised; and also any notorious robbers, or thieves, or vagrants of suspicious character, as described in Section 10, Regulation 22, 1793. *Twelfth.* No zemindar shall summon the ryots of another zemindar.

*Thirteenth.* The digwars, pykes, or other police officers of one zemindar, are not subject to the orders of another. But all being employed in the public service, for the general protection of the country, and the security of the lives and property of its inhabitants, it is expected that whenever there may be occasion for their co-operation, and especially when they may be called upon by the magistrate, or by any public officer acting on the part of the magistrate, they will jointly use their utmost endeavours to pursue and apprehend choars, as well as all other plunderers and disturbers of the peace. *Fourteenth.* No zemindar shall send his pykes, or other police officers, within the limits of other zemindars, without receiving an express application from the latter for the purpose; or without a special order from the magistrate, or from a public officer, duly authorized, acting for the magistrate. But whenever choars, or other plunderers, shall attempt to assemble in any zemindary, or to pass through it, for the purpose of plundering another zemindary, or to return through it after committing depredations, the zemindar and his police officers shall use their utmost endeavours to apprehend the offenders while in his zemindary. Should their number or force be such as to require assistance for their apprehension, the zemindar shall send immediate information to the commanding officer of any military detachment stationed in the vicinity, or to the nearest police station; and also to the magistrate's cutcherry. *Fifteenth.* Any zemindar who may be convicted of having connived at the assemblage or passage of choars or other plunderers within the limits of his zemindary, and of not attempting to apprehend them, or giving the information required in the preceding article; or who may, in any instance, be convicted of wilful neglect in affording the assistance incumbent upon him to apprehend plunderers and prevent depredation; will be liable to punishment by fine, or imprisonment; or in a heinous case by forfeiture of his land;

To whom persons apprehended by zemindars are to be sent within twenty four hours.

Recognizances to be taken from prosecutor and witnesses. In what cases razeenamahs may be taken.

Zemindars required to apprehend choars, and other plunderers.

What other persons may be apprehended without a written charge.

No zemindar to summon ryots of another.

Watchmen and other police officers of one zemindar not subject to orders of another. But general co-operation expected when requisite.

Restrictions on sending pykes, or other police officers, within the limits of other zemindars.

But every endeavour to be used for apprehending choars, or other plunderers, assembling in, or passing through, any zemindary. And information given, if assistance be required.

Penalties for connivance or wilful neglect, in the cases stated

<sup>1</sup> In the third clause of Section 33, Regulation 20, 1817, before cited, it is directed, that "copies of this regulation shall be furnished to all zemindars, or other landholders, or managers of estates, entrusted with the management of the police; and such zemindars, or other landholders, or managers, shall observe the rules therein prescribed for the conduct of the police darogahs, as far as the same may be applicable to their duties as chief police officers."

Magistrate  
how to pro-  
ceed in such

In what cases  
zemindars fur-  
ther liable to  
a criminal  
prosecution.

And, on con-  
viction, to a  
confiscation,  
or sale, of  
their lands.

Responsibility  
of zemindars  
for property  
robbed, or  
stolen.  
And engage-  
ment to be  
executed by  
them.  
Under which  
they may be  
sued, for losses  
by robbery or  
theft, in civil  
court.

Information  
and monthly  
reports to be  
sent to the  
magistrate.  
In what lan-  
guage and cha-  
racter such  
communica-  
tions to be  
made and or-  
ders issued by  
the magis-  
trate.  
Serberakars  
of disqualified  
landholders  
may be en-  
trusted with  
police.  
And to receive  
sunnuds, exe-  
cute engage-  
ments, and  
perform duties  
as zemindars.  
With such qual-  
ified respon-  
sibility as Go-  
vernment may  
direct.

according to the circumstances of the case, and under the provisions of the general regulations in force. The principal and other subordinate officers of zemindars, who may be convicted of any of the offences specified, will also be liable to the same penalties. *Sixteenth.* When the magistrate shall be of opinion, that an offence of the nature described in the preceding clause is established, he shall record his judgment to that effect, with the punishment he may consider adequate to the case; but previously to carrying the same into execution, shall transmit his proceedings to the court of nizamat adawlut, for the sentence of that court; and in cases of forfeiture, for the ultimate determination of the Governor General in Council, as provided in Clause Third, Section 3, Regulation 2, 1797.' *Seventeenth.* Any zemindars entrusted with the charge of the police, who shall appear to the magistrate to have been directly or indirectly concerned in the commission of robbery, either in, or out of, the limits of his own zemindary, or to have aided or abetted robbers; or to have received any plundered property from them; will be liable, in common with all other landholders, in such cases, under Section 3, Regulation 22, 1793, to be prosecuted for the crime, before the court of circuit; and on conviction, in addition to the legal punishment, their lands are declared liable to confiscation, or to be sold for the purpose of making good the value of the property plundered, at the discretion of the Governor General in Council. *Eighteenth.* The zemindars shall engage to be responsible for the amount of all property robbed, or stolen, within their respective estates; unless it shall clearly and satisfactorily appear that the robbery or theft, in which such property may have been taken, was not, in any respect, owing to their want of care to prevent it, or to a want of vigilance on the part of their police officers. Every zemindar entrusted with the charge of the police, shall, previously to receiving his sunnud, execute an engagement to the above effect; and on his refusal to make good the amount of any loss sustained by robbery or theft, committed within his zemindary, may be sued by the party injured, in the civil court of the zillah, wherein the loss shall have been sustained, for recovery of the amount: subject to the general rules in force, for the trial, and decision of civil causes. *Nineteenth.* The zemindars shall transmit regular information to the magistrate of all occurrences relating to the police of their zemindaries, and shall also send the monthly reports directed in Section 21, Regulation 22, 1793; according to a form to be furnished to them by the magistrate for that purpose. *Twentieth.* All reports, letters, and written information, shall be transmitted by the zemindars to the magistrate, and all orders and communications shall be issued by the magistrate to the zemindars, in the language and character commonly used in their respective zemindaries. *Twenty-first.* In estates, the proprietors of which may be disqualified from age, sex, or other cause, the serberakar, or manager, is declared eligible for the charge of the police, with the sanction of the Governor General in Council; and, if appointed to this trust, shall receive a sunnud, execute engagements, and perform all the duties above prescribed for a zemindar entrusted with the police; under the stated provision and responsibility; or with such qualification of the latter, as the Governor General in Council may, in any instance, specially authorize and direct."

' This rule is modified in cases of fine by the provisions of Regulation 9, 1808, &c. cited in pages 401, to 407.

*Superintendents of Police.*

The office of superintendent of police for the provinces of Bengal and Orissa, or more exactly, for the divisions of Calcutta, Dacca, and Moorshedabad, was constituted, on the 28th November, 1808, for the reasons stated in the following preamble to Regulation 10, 1808, passed on that date :—

“ Under the system of police established in the provinces subject to the presidency of Fort William, the zillah and city magistrates, with the police officers and other persons acting under them respectively, have exclusive authority, in all matters of police, within their several jurisdictions ; except in particular cases, wherein a concurrent authority is specially sanctioned ; and with a local exception to the 24 pergunnahs, and parts of the adjacent districts in the vicinity of Calcutta, in which the justices of the peace for that city have been vested with the powers of magistrates, as stated in the preamble to Regulation 7, 1806.\* It is however consistent with the practice of other governments, that judicious and well concerted measures should occasionally be adopted from the capital, in addition to the local administration of the police, for the apprehension of public offenders ; and for the maintenance of general order and tranquillity throughout the country. By concentrating information obtainable from different parts of the country, in a particular office at the presidency, a successful plan of operations may be devised and executed when the efforts of the local police officers would be unavailing. Information and measures conducive to the discovery and seizure of the gangs of dacoits, which still continue to infest many of the zillahs in the province of Bengal, may especially be promoted by the appointment of a superintendent of the police. A power, vested in this officer, to act in concert with the zillah and city magistrates, or independently of them, as circumstances shall direct, may also be usefully employed in the detection and apprehension of persons charged with or suspected of other public offences ; and to promote this object, it is expedient that he should be one of the justices of the peace for the presidency. The Governor General in Council has accordingly enacted the following regulation, to be in force as soon as promulgated.

§ 2. “ In addition to the persons holding the joint offices of justices of the peace for the city of Calcutta, and magistrates of the 24 pergunnahs, but whose functions are, for the most part, confined to the city and its suburbs, a covenanted servant of the Company shall be appointed to the offices of justice of the peace for the city of Calcutta ; magistrate of the 24 pergunnahs ; and superintendent of police.” § 3. “ As justice of the peace, he will of course be guided by the laws in force for the execution of the duties of that

Office of superintendent of police for Bengal and Orissa, constituted by R. 10, 1808.  
Preamble to that regulation.

Section 2.  
A covenanted servant of the Company to be appointed justice of the peace for the city of Calcutta, magistrate of the 24 pergunnahs, and superintendent of police.  
Section 3  
By what laws, to be guided as justice of the peace.

\* The preamble here referred to is in the following terms :—“ With a view of improving the police in the town and suburbs of Calcutta, it was deemed expedient, in the year 1800, to constitute the justices of the peace for the town of Calcutta, magistrates of the twenty-four pergunnahs, and parts of the adjacent districts situated within the distance of about twenty miles from the town of Calcutta, with the general powers vested in the magistrates of the zillahs and cities by Regulation 9, 1793, and by the other regulations in force respecting the administration of criminal justice and police. The jurisdiction of the court of circuit for the division of Calcutta was at the same time reserved, as before, for the trial of all persons committed, or held to bail, by the magistrates of the twenty-four pergunnahs, for offences not cognizable by the supreme court of judicature. This arrangement has produced the full benefit expected from it, in improving the police of the town of Calcutta and its environs.”



Section 4.  
And as magistrate of the 24 pergunnahs.

Section 5.  
Jurisdiction of superintendent of police.

Section 6.  
His process how to be executed.

Magistrates and all persons under them to give their aid. Resistance to such process how punishable.

Section 7.  
Superintendent of police authorized to correspond with officers of Government in every department.

Section 8.  
To communicate immediately with Governor General in Council.

Section 9.  
To be also under general authority of the nizamut adawlut, in matters of police.

Reasons for appointing a superintendent of police in the divisions of Patna, Benares, and Bareilly, stated in the preamble to R. 8, 1810.

Section 2.  
Jurisdiction of former superintendent extended to the division of Patna.

Section 3.  
Appointment

office." § 4. "As magistrate of the 24 pergunnahs, he shall, with the aid of two assistants, perform the duties of that office, in conformity with the regulations in force for the guidance of the zillah magistrates." § 5. "In his capacity of superintendent of police, he shall possess a concurrent jurisdiction with the several zillah and city magistrates in the divisions of Calcutta, Dacca, and Moorshedabad." § 6. "The superintendent of police is empowered to execute his warrants, and other process, in the form prescribed by the regulations, either by means of his own officers, or through the local authorities, as he may judge proper. The several zillah and city magistrates, and all persons acting under them, are required to aid and support the officers of the superintendent of police in the execution of any warrant or other process issued by him, under his seal and signature, and resistance to any process so issued is hereby declared to be punishable, in like manner as provided by the regulations for resistance to the process of a zillah or city magistrate." § 7. "The superintendent of police is authorized to correspond, either publicly or secretly, with the officers of Government in every department, upon subjects connected with the discharge of the duty committed to him; and all public officers are directed to furnish the superintendent with any information they may possess upon such subjects; as well as generally to co-operate with him and to afford every assistance in their power to enable him to accomplish the objects of his appointment." § 8. "The superintendent of police shall communicate immediately with the Governor General in Council, through the secretary in the judicial department, upon all matters connected with his office; and shall act under such instructions as may, from time to time, be transmitted for his guidance by the order of Government." § 9. "The superintendent of police shall also be considered under the general authority of the court of nizamut adawlut, in all matters relative to the police; and upon any point not expressly provided for by the regulations, or by the orders of Government, shall be guided by the instructions of that court."

The benefits experienced from the appointment of a superintendent of police for the divisions of Calcutta, Dacca, and Moorshedabad, in the apprehension of public offenders, and in the general improvement of the police in those divisions, rendering it advisable, that similar arrangements should be adopted in the divisions of Patna, Benares, and Bareilly; the following rules were enacted for this purpose in Regulation 8, 1810:—§ 2. "The division of Patna is hereby annexed to the jurisdiction of the superintendent of police for the divisions of Calcutta, Dacca, and Moorshedabad, who is accordingly authorized to exercise in the division of Patna, from and after the promulgation of this regulation, all the powers, duties, and authority, vested in him by Regulation 10, 1808, with regard to the three other divisions." § 3. "A separate superintendent of police shall be appointed for the divisions of Benares and Bareilly, who shall possess concurrent jurisdiction with the several

<sup>1</sup> The stationary duties of the magistrate of the 24 pergunnahs being found incompatible with a due attainment of the objects proposed by the appointment of a superintendent of police, especially in preventing his personal visits to different parts of his extensive jurisdiction, (See on this subject, and for further information of the origin and design of the office of superintendent of police, *Mr. Secretary Dowdeswell's Report on the general state of the police of Bengal*, dated 22d September, 1809, and printed in the appendix to the Fifth Report of the Select Committee of the House of Commons on the affairs of the East India Company, 28th July, 1812;) "Such parts of Regulation 10, 1808, as enacted that the person, holding the office of superintendent of police in the lower provinces, shall be likewise magistrate of the 24 pergunnahs," were rescinded by Section 3, Regulation 14, 1811.

zillah magistrates in those divisions, and with the magistrate of the city of Benares; and who shall be competent to exercise all the powers, duties and authority in those divisions which are vested by Sections 5, 6, 7, 8, and 9, Regulation 10, 1808, and by Section 2, of the present regulation, in the superintendent of police in the divisions of Calcutta, Dacca, Moorshedabad, and Patna; provided always that the superintendent of police in the divisions of Benares and Bareilly, shall be guided by the regulations which have been or may be enacted for the internal administration of the said divisions respectively. The foregoing rule shall be considered to be in force from and after the period that the superintendent may be actually appointed by the Governor General in Council or Vice President in Council." § 4. "The primary object of the appointment of the two superintendents of police being the apprehension of dacoits, cozaunks, thugs, budecks, and other descriptions of public offenders, guilty of the commission of robberies and other crimes by open violence, the said superintendents shall from time to time proceed into the different zillahs, or to any of the cities comprized within the limits of their respective jurisdictions, according as they may themselves deem necessary and proper, or as the Governor General in Council, or Vice President in Council, may direct: Provided, however, that nothing contained in this section, shall be construed to prevent the superintendents from exercising the full powers of their offices throughout the whole extent of their jurisdictions, in whatever part of it they may at any time be resident." § 5. "It shall be the duty of the superintendents to keep themselves constantly informed, by communication with the local magistrates, with the darogahs of police, and with the zemindars and others, and by every other practicable means of enquiry, of the actual state of the police, in the several zillahs and cities, comprised within their respective jurisdictions; and submit to Government, any information respecting the prevalence of public offences in any of those zillahs or cities, or on other points appearing to the superintendents to require the interposition of Government." § 6. "The magistrates of the several zillahs and cities, are hereby enjoined to afford every aid and co-operation to the superintendents of police, and to their respective officers, in the discharge of the duties vested in them; and the different provincial courts are, in like manner, required to give every support to the superintendents and their officers, which may be consistent with the principles of justice and the general regulations."

The following provisions are enacted in Section 5, of Regulation 3, 1812: "First. The superintendents of police are invested by the existing regulations with a concurrent jurisdiction with the magistrates of the zillahs and cities included within the local limits of the authority of the said superintendents respectively. It being necessary however to make provision for the execution of sentences, which may be passed by the superintendents, on offenders, in cases in which such sentences cannot conveniently be carried into effect under their immediate directions, they are hereby declared competent to certify all such sentences to the magistrate of the district in which the offence may have been committed; and the magistrate, to whom such application may be addressed, is hereby authorized and required to carry the sentence of the superintendent into execution, in the same manner as if it had been passed by the magistrate himself. Second. In cases, in which persons may be committed or held to bail by the superintendents of police, for trial before the courts of circuit, and the said superintendents may not conveniently be able to superintend the conduct of such prosecutions themselves, it shall be competent for them to certify the order regarding the trial to the magistrate of the district in which the offence may be alleged to have been com-

of a separate superintendent of police for the divisions of Benares and Bareilly, with all the powers, duties, and authority, contained in Reg. 10, 1808. Proviso.

Section 4. Primary object of the appointment of superintendents of police.

But they may exercise the full powers of their offices throughout their jurisdictions.

Section 5. To keep themselves informed of the state of the police; and submit information of prevalent offences to Government.

Section 6. The magistrates and provincial courts to afford every aid and co-operation to the superintendents of police, and their officers, in the discharge of the duties vested in them. Provisions in R. 3, 1812, § 5. Magistrates authorized and required to carry sentences passed by the superintendents of police into execution in certain cases.

Magistrates to superintend the conduct of prosecutions in cases certified by the superintendents.

Superintendents not precluded by the foregoing provisions from performing those duties themselves,

Duties of the two superintendents of police further defined and enlarged by R. 17, 1816.

Section 2. General register of police and jail establishments to be prepared by the superintendents of police. Establishments to be revised by the superintendents of police.

Section 3. Annual comparative statement of establishments to be transmitted to Government by the superintendents of police, together with a report.

Section 4. Annual report on the state of the subsidiary establishments of police to be submitted to Government.

mitted, and the magistrate, on receipt of such application, shall then superintend the conduct of the prosecution before the court of circuit, in the same manner as if the accused party had been committed or held to bail by the magistrate himself. *Third.* Provided however, that nothing contained in the preceding clauses, shall be construed to prevent the superintendents of police from causing sentences, passed by them under the regulations, being carried into effect under their immediate directions, or from superintending the conduct of prosecutions against persons committed or held to bail by them for trial before the courts of circuit, in cases in which they may deem it advisable to execute those duties themselves."

The duties of the two superintendents of police have been further defined and enlarged by Regulation 17, 1816; which, besides the rules already cited from it, relative to the appointment and removal of the native police officers by the zillah and city magistrates; contains the following enactments, "for the occasional revision of the regular police and jail establishments; for the due support and regulation of the establishments of chokeedars; and for modifying the constitution of the offices of the superintendents of police."

§ 2. "*First.* A general register of all establishments of police or jail guards (whether permanent or temporary) which may be entertained at the charge of Government, shall be prepared and kept up by the superintendents of police, for their respective divisions, according to such form as may be judged most convenient, exhibiting the description, strength, distribution, and expense, of all such guards, or establishments, entertained within the provinces dependent on the presidency of Fort William. *Second.* The several zillah and city magistrates shall furnish the superintendents of police with such information as may be required to enable the superintendents, in concert with those officers, to enter upon a complete and accurate revision of the police and jail establishments of the several zillahs or cities, and to prepare and submit to Government, on as reduced a scale as may be practicable, without hazard to the public safety, a revised statement of police and jail establishments for each district, comprized within their respective jurisdictions." § 3. "With a view to the same objects, the superintendents of police will hereafter regularly submit to Government, with their annual police reports, or as soon after the transmission thereof as may be practicable, an abstract statement, exhibiting a comparative view of the strength and expense of all descriptions of police or jail establishments entertained, during the two preceding years, in the several districts situated within their respective jurisdictions, together with a separate address, explanatory, on the one hand, of any temporary or local increase in such establishments, which circumstances may have rendered necessary, or suggesting, on the other, any further reductions in the strength of those establishments, which the ameliorated state of the police, the progressive introduction of subsidiary police arrangements, or other circumstances, may appear to admit." § 4. "The superintendents of police will also submit to Government an annual report respecting the state of all subsidiary police establishments which may have been, or which may hereafter be, entertained on the principles of the provisions of Regulation 13, of 1813." The local magistrates are strictly enjoined to give the utmost attention to the due organization and proper maintenance of such establishments, in conformity with those provisions, and vigilantly to guard against any relaxation of control, either in respect to the conduct of the individuals composing such establishments, or of those who may be entrusted with the

\* The provisions of this regulation have been re-enacted, with amendments, in Regulation 22, 1816, before cited.

realization and payment of the stipends of the chokeedars; and it shall be the special duty of the superintendents of police to bring under the notice of the local magistrates, and, if necessary, of Government, any material deviation from the existing provisions which may prevail, whether partially or otherwise, in respect to those establishments, as well as to offer any suggestions, which, from experience, may appear calculated to extend and to confirm the benefits contemplated by their institution." § 5. "In order to enable the superintendents of police to furnish the annual report to Government, required by the preceding sections, the several zillah and city magistrates shall supply any information relating to the establishments in question, which the superintendents may require, and shall likewise conform to any suggestions of those officers, in respect to the organization and management of the said establishments, which may be consistent with the tenor and spirit of the regulations."

§ 10. "The superintendents of police are hereby declared competent to remove or appoint any ministerial native officer employed upon their respective establishments, whenever they may see sufficient cause, and all such appointments or removals shall be final." § 11. "*First.* The superintendents of police are further declared competent, in the same manner and to the same extent as the local magistrates, to impose fines on any cutwal, police darogah, or other subordinate officer of the police establishments stationed within the limits of their respective jurisdictions. *Second.* The superintendents of police are likewise declared competent to suspend from office any cutwal, darogah, or other subordinate officer, of the police establishments of their respective jurisdictions, during any enquiry which they may judge proper to institute in regard to the conduct of such officers, and also for neglect, or failure to furnish information, or to obey orders issued to them by the superintendents of police. *Third.* Whenever the superintendents of police may deem it necessary, in the discharge of their duties, to fine or suspend any of the public officers above specified, they shall communicate an extract from their proceedings with a copy of the order passed by them to the local magistrate, who, in pursuance of Clause First, Section 5, Regulation 3, 1812, will proceed to realize the fine in the same manner as if it had been imposed by the magistrate himself, or to carry into effect the superintendent's order of suspension, and to supply the vacancy occasioned thereby." § 12. "*First.* Should the superintendents of police, on visiting any district of their respective jurisdictions, deem it advisable to take under their immediate charge, for the purpose of exercising temporarily the powers of magistrate, any police thannah or thannahs of such district, they will make the necessary application for that purpose to the local magistrate, who will comply with all requisitions to that effect, from the superintendents of police, without awaiting any specific orders from Government, under the provisions of Clause Third, Section 2, Regulation 16, 1810. *Second.* In such cases the superintendents of police will exercise the same powers as are vested in the magistrates with regard to the removal or suspension of any of the police officers attached to the thannahs of which the superintendents may take charge under the foregoing clause, and the zillah or city magistrates shall not be considered to be authorized, without the special sanction of Government, to exercise any concurrent jurisdiction in such thannah or thannahs, except in the cases provided for in Section 16, Regulation 22, 1793, Section 15, Regulation 17, 1795, and Section 16, Regulation 35, 1803." § 13. "All correspondence of the zillah and city magistrates, relative to the strength, distribution, or expense, of their police or jail establishments, (whether temporary or permanent) or respecting any alteration of police stations, or of their local boundaries, and,

Section 6.  
Information to be supplied by the magistrates to the superintendents of police.

R. 17, 1816.  
Section 10.  
Superintendents empowered to remove and appoint their own officers.  
Section 11.  
Superintendents of police authorized to fine police officers.  
Also to suspend them in certain cases.

Superintendent's orders how to be carried into effect.

Section 12.  
Superintendents of police authorized to assume exclusive charge of thannahs.  
Rule to be observed in such cases.

Powers to be exercised by the superintendents of police. Magistrates prohibited from exercising concurrent jurisdiction in any such thannahs except in specific cases.  
Section 13.  
All correspondence on matters of police to be

conducted through the offices of the superintendents of police. Section 14. Reports to be sent to the superintendents of police, of convicts breaking jail, or any prisoners effecting their escape. And rewards recommended if necessary.

Superintendents of police how to proceed on receipt of such reports.

Section 15. Magistrates how to proceed in recommending rewards for meritorious services.

Section 16. The revenue authorities to retain the superintendence of lands assigned for the maintenance of bridges, serays, &c. Parts of regulation 19, 1810, rescinded. Section 17. A general control over public roads, &c. vested in the superintendents of police. Magistrates to communicate with them in cases when public works are considered necessary.

generally, all correspondence of those officers with the Government which may have reference to arrangements or matters of police, shall hereafter be conducted through the offices of the superintendents of police."

§ 14. "*Second.*" The zillah and city magistrates shall communicate to the superintendents of police of their respective divisions all instances of convicts breaking jail, before the expiration of the period of their sentences, as well as every instance in which a prisoner in custody, during examination or commitment, for trial, or under requisition of security for good behaviour, may effect his escape, transmitting, for the information of the superintendents of police, a copy or extract of the proceedings holden by them on such occasions, together with information of the measures taken to re-apprehend the persons who have escaped, stating, at the same time, whether, in their opinion, it may be advisable to offer any reward for the re-apprehension of such persons, and if so, the amount of such reward. *Third.* If the superintendent of police should be of opinion that the re-apprehension of the offender or offenders may be effected without the offer of a reward, he will employ, in concert with the local magistrate, the means which he may consider best adapted to that purpose; but should he deem the offer of a reward expedient, he will, in like manner, adopt the necessary measures for giving publicity to the same; provided, that whenever the reward proposed to be offered for the re-apprehension of any individual, shall exceed the sum of one hundred sicca rupees, the sanction of Government shall be previously obtained; in cases, however, in which heinous offenders may have escaped, or on occasions of emergency, the magistrates shall exercise a discretion in offering a reward, not exceeding the sum of one hundred rupees, reporting the offer for the confirmation of the superintendent of police." § 15. "When a zillah or city magistrate shall be of opinion that it is expedient to grant any reward to a police officer, or other person, for particularly meritorious conduct, or for any services rendered to the police, he will state the circumstances, with his sentiments, to the superintendent of police, who, on such occasions, will exercise the same powers, and proceed in the same manner, as is prescribed by the preceding section; but this rule shall not be construed to preclude the courts of circuit and court of nizamat adawlut from the exercise of the powers vested in them by Section 18, Regulation 16, 1810, whenever, from any circumstances which may appear in the progress of a trial, they may consider it expedient to direct or to recommend the payment of any reward, under that section."

§ 16. "The general superintendence of all lands assigned as endowments for the maintenance of bridges, serays and kuttras, shall remain, as heretofore, vested in the board of revenue and board of commissioners; but, such parts of Regulation 19, 1810, as require that those boards should provide, with the sanction of Government, for the due repair and maintenance of public edifices of this description, are hereby rescinded."

§ 17. "*First.* The superintendents of police shall exercise a general control over the public roads, bridges, serays and kuttras, within the limits of their respective jurisdictions. *Second.* Whenever the local magistrates may be of opinion that any works of the description specified in the preceding clause, are necessary in the cities or zillahs subject to their authority, they shall communicate their sentiments on the subject to the superintendent of police in the lower or western provinces, as the case may be, instead of addressing

<sup>2</sup> The first clause of this section (which directs the magistrates to submit for the inspection and orders of the judge of circuit, at the time of sessions, all proceedings held by them respecting the escape of prisoners, and conduct of the guards from whose custody their escape may be effected) has been already cited in page 416.

themselves directly to Government. *Third.* On receipt of communications of the description abovementioned, the superintendents of police shall consider, not merely the local advantages which may attend the proposed works, but likewise their tendency to facilitate the communication between the several districts, and their general utility, whether in the promotion of the commercial or common interests of the country at large. *Fourth.* The superintendents of police shall likewise ascertain how far the labor of the convicts confined in the several districts within their respective jurisdictions, can be employed in the execution of the proposed works, without withdrawing them from other works of equal or greater utility. *Fifth.* The several zillah and city magistrates shall furnish the superintendents of police with such information as may be required by those officers in regard to the employment of the convicts and the state of the public works." § 18. "Whenever it may be necessary, under the orders of Government, to collect any number of convicts together for the execution of public works, and such convicts cannot be supplied from the sudder station of the district in which their services may be required, the superintendents of police shall make application to the court of nizamat adawlut, stating the number of prisoners required, the work on which it is proposed that they should be employed, and the districts from which, in their opinion, they can be most conveniently supplied; and the court of nizamat adawlut shall determine on the expediency of the removal of the convicts, and issue such instructions on the subject to the local magistrates as they may deem proper." § 19. "*First.* In cases in which the superintendents of police may be of opinion, whether on consideration of reports from the local magistrates, or from other sources of information, that any public work, of the description specified in Section 17, should be undertaken at the expense of Government, they shall ascertain, from the local authorities, and, as far as practicable, from professional persons, the expense to which Government would be subject in the execution of the proposed works, and shall submit a full and comprehensive report on the subject to Government, containing the necessary information in regard to the utility of the work, together with an estimate of the probable expense attending its execution. *Second.* In submitting reports of the above description, the superintendents of police shall be careful to ascertain whether any means can be devised for defraying the expense of the proposed works otherwise than from the general funds of Government, and they will refrain from recommending any expensive undertakings, except in cases which may promise to be attended with more than ordinary convenience and advantage." § 20. "Nothing in the foregoing rules shall be construed as superseding the control exercised by the courts of circuit in regard to the employment of the convicts."

It will be sufficient to add, concerning the office of superintendent of police, in the lower and upper provinces respectively, that the objects proposed by the institution of this office have been accomplished, in an eminent degree, by the diligence, activity, and zeal, of the gentlemen selected to fill it; and that it has been found especially useful in bringing before the Executive Government more accurate information of the prevailing crimes in particular districts, as well as of the general state of the police, than could have been otherwise obtained. The annual reports of the superintendents are also highly interesting; and convey to the public authorities in England, as well as in India, connected and perspicuous statements of the actual condition of the country, to which they refer, from year to year; not only with respect to the existence of criminal offences, and the success of the measures adopted for suppressing them; but also upon many other points relating to the general police, and administration of criminal justice.

How the superintendents are to proceed on the receipt of such communications.

Further rules for the guidance of the superintendents on such occasions.

Magistrates to furnish information regarding the public works, &c. Section 18. Superintendent to apply to the nizamat adawlut in cases when convicts cannot be obtained from the sudder station.

What such applications are to contain.

Section 19. Superintendents to report when the construction of public works, at the expense of Government, appears advisable.

Rules to be observed in submitting such reports to Government.

Concluding remarks on the success which has attended the institution of the office of superintendent of police.

And on the interesting annual reports furnished by the two superintendents.

*Special Rules concerning Emigrants from foreign countries.*

Preamble to R. 11, 1812, stating the grounds of that regulation.

Considerable bodies of persons, being natives of Arracan, and ordinarily denominated Muggs, having, from time to time, emigrated from that country, and established themselves in that part of the district of Chittagong, which lies contiguous to the Arracan frontier; and numbers of those persons, or of their descendants, abusing the protection which had been afforded to them in the British territories, having excited disturbances, and even levied war in the country of Arracan, against the Government of Ava, of which state Arracan is now a dependency; conducting themselves in a manner manifestly tending to disturb the relations of amity which subsist between the British Government and the Government of Ava; it was, in consequence, deemed necessary that the Governor General in Council should possess legal powers to remove the said bodies of emigrants and their descendants, from the frontier of the territory of Arracan, or any other bodies of aliens or their descendants, from the vicinity of the country, from which they may have emigrated; and likewise to detain in confinement any of those persons, or any other individuals, being natives of foreign countries, or their descendants, for offences of the above nature, actually committed by them in the territories of the state from which they may have emigrated. It was, at the same time, judged proper to make provision for the trial of persons committing, or aiding in the commission of the said offences; and the following rules were accordingly enacted in Regulation 11, 1812:—

Section 2.  
Cases in which the Governor General in Council may order the removal of emigrants to such parts of the country as he may deem most convenient.

§ 2. "Whenever the Governor General in Council, upon due investigation, shall be satisfied, that the emigrants from Arracan, or emigrants from any other state, who may have sought an asylum in the British territories, or the descendants of any of the said emigrants, shall have abused the protection afforded to them, by attempts to excite disturbances in the state from which they or their ancestors may have emigrated, it shall be competent to the Governor General in Council to order the removal of those persons, to such other part or parts of the country, as may be judged most convenient for their future residence. In like manner it shall be competent to the Governor General in Council to order such removal, whenever he may have grounds to be satisfied, that the residence of any body of aliens, or their descendants, in the vicinity of the frontier of the country from which they or their ancestors may have emigrated, is likely to cause any serious misunderstanding between that state and the British Government." § 3. "Whenever any body of emigrants, or any individuals belonging to such body, shall be ordered to be removed from the part of the country in which they may have been established, they shall be allowed to dispose of any property which they may have acquired, in such manner as they may judge proper; provided however, that if they shall nevertheless retain the right to any real property, at the period of their actual removal, it shall be competent to the Governor General in Council to order such property to be sold by public auction, under the superintendence of the collector of the district. In that case, the net proceeds of the sale shall be duly paid to the person or persons to whom the said property belonged." § 4. "In cases in which the Governor General in Council may, on due enquiry and mature deliberation, be satisfied, that either the preservation of the tranquillity of the British territories, or of the dominions of the allies of the British Government, or the maintenance of the relations of amity subsisting between the British Government and other

Section 3.  
Such emigrants allowed to dispose of any property they may have acquired, or Government may order real property not disposed of at the period of removal, to be sold, and the proceeds to be paid to the emigrants.  
Section 4.  
The Governor General in Council may, in certain cases, order the leaders of

states, require that any of the leaders, or other persons of the above description, who may have committed the offences mentioned in Section 2, of this regulation, should be placed and detained under restraint, it shall be competent to the Governor General in Council to order any such persons, having committed any of the said offences, but not otherwise, to be apprehended and committed to confinement at such place and under the custody of such public officer, and detained in confinement for such time, as may be deemed by the Governor General in Council necessary for the public good."

§ 5. "First. Any persons of the above description, or their descendants, who, while living under the protection of the British Government, shall enter the country from which they or their ancestors may have emigrated, or any other foreign country, and shall excite or attempt to excite disturbances in the said countries, shall be liable to be brought to trial for that offence before the court of circuit, and if convicted, shall be sentenced to suffer imprisonment for the period of seven years. Second. Any persons, whether native British subjects, or aliens, who shall furnish emigrants from foreign countries with any assistance, either of men, money, or arms, in prosecution of their attempts to excite disturbances in the country from which they may have emigrated; or in any other country, or shall otherwise aid such aliens in the prosecution of their criminal design, shall be liable to be brought to trial for that offence before the court of circuit, and if convicted, shall be sentenced to suffer imprisonment for the term of seven years: provided however, that if the judge of circuit, by whom the case may be tried, shall be of opinion that the punishment established by this and the preceding clause, should in any instance be mitigated, he shall submit the proceedings held on the trial to the nizamut adawlut, who will recommend to the Governor General in Council such alleviation of the prescribed punishment as they may judge proper: provided moreover that no sentence or order, which may be passed on the trial of any persons under the provisions of the present regulation, shall be competent, or shall be construed to preclude the Governor General in Council from the exercise of the power vested in the Government, by Section 4, of the said regulation."

other emigrants to be apprehended and kept under restraint.

Section 5. Emigrants or their descendants exciting disturbances in the countries from which they may have emigrated, to be tried, and if convicted, to be sentenced to seven years' imprisonment. Any persons aiding or assisting in attempts to excite such disturbances, liable to trial and similar punishment.

Such sentences may be mitigated in certain cases, but no sentence or order passed on any such trials, to preclude Government from the exercise of the powers vested in it by Section 4

### *Special provisions for confinement of State Prisoners.*

Regulation 3, 1818, on the grounds stated in the following preamble to that regulation, contains special provisions for the confinement of state prisoners.

"Whereas reasons of state, embracing the due maintenance of the alliances formed by the British Government with foreign powers, the preservation of tranquillity in the territories of native princes entitled to its protection, and the security of the British dominions from foreign hostility, and from internal commotion, occasionally render it necessary to place under personal restraint, individuals against whom there may not be sufficient ground to institute any judicial proceeding; or when such proceeding may not be adapted to the nature of the case, or may for other reasons be unadvisable or improper; and whereas it is fit that, in every case of the nature herein referred to, the determination to be taken, should proceed immediately from the authority of the Governor General in Council; and whereas the ends of justice require that, when it may be determined that any person shall be placed under per-

Provisions for confinement of state prisoners, contained in R. 3, 1818. Preamble to that regulation.



sonal restraint, otherwise than in pursuance of some judicial proceeding, the grounds of such determination should from time to time come under revision, and the person affected thereby should at all times be allowed freely to bring to the notice of the Governor General in Council, all circumstances relating either to the supposed grounds of such determination, or to the manner in which it may be executed; and whereas the ends of justice also require that due attention be paid to the health of every state prisoner confined under this regulation, and that suitable provision be made for his support according to his rank in life, and to his own wants and those of his family; and whereas the reasons above declared sometimes render it necessary that the estates and lands of zemindars, talookdars, and others, situated within the territories dependent on the presidency of Fort William, should be attached and placed under the temporary management of the revenue authorities, without having recourse to any judicial proceeding; and whereas it is desirable to make such legal provisions as may secure from injury the just rights and interests of individuals, whose estates may be so attached, under the direct authority of Government; the Vice-President in Council has enacted the following rules, which are to take effect throughout the provinces immediately subject to the presidency of Fort William, from the date on which they may be promulgated."

Section 2.  
Mode of proceeding for placing individuals under restraint as state prisoners.  
Form of warrant to be issued.

§ 2. "*First*. When the reasons stated in the preamble of this regulation may seem to the Governor General in Council to require, that an individual should be placed under personal restraint, without any immediate view to ulterior proceedings of a judicial nature, a warrant of commitment under the authority of the Governor General in Council, and under the hand of the Chief Secretary, or of one of the Secretaries to Government, shall be issued to the officer in whose custody such person is to be placed. *Second*. The warrant of commitment shall be in the following form:—

"To the (*here insert the officer's designation*.)

"Whereas the Governor General in Council, for good and sufficient reasons, has seen fit to determine that (*here insert the state prisoner's name*) shall be placed under personal restraint at (*here insert the name of the place*), you are hereby required and commanded, in pursuance of that determination, to receive the person above named into your custody, and to deal with him in conformity to the orders of the Governor General in Council, and the provisions of Regulation 3, of 1818.

"Fort William, the

"By order of the Governor General in Council,

"A. B.

"*Chief Sec. to Govt.*"

*Third*. The warrant of commitment shall be sufficient authority for the detention of any state prisoner in any fortress, jail, or other place, within the territories subject to the presidency of Fort William." § 3. "Every officer in whose custody any state prisoner may be placed, shall, on the 1st of January and 1st of July of each year, submit a report to the Governor General in Council, through the Secretary to Government in the political department, on the conduct, the health, and the comfort, of such state prisoner, in order that the Governor General in Council may determine whether the orders for his detention shall continue in force or shall be modified." § 4. "*First*.

When any state prisoner is in the custody of a zillah or city magistrate, the judges of circuit are to visit such state prisoner, on the occasion of the periodical reports.

Such warrant sufficient for the detention of any state prisoner.  
Section 3.  
Officers having custody of state prisoners to submit periodical reports.  
Section 4.  
State prisoners in the custody of the zillah or city magistrate, to be visited by the judge of circuit at the ses-

dical sessions, and they are to issue any orders concerning the treatment of the state prisoner, which may appear to them advisable, provided they be not inconsistent with the orders of the Governor General in Council, issued on that head. *Second.* When any state prisoner is placed in the custody of any public officer not being a zillah or city magistrate, the Governor General in Council will instruct either the zillah or city magistrate, or the judge of circuit, or any other public officer, not being the person in whose custody the prisoner may be placed, to visit such prisoner at stated periods, and to submit a report to Government, regarding the health and treatment of such prisoner."

§ 5. "The officer, in whose custody any state prisoner may be placed, is to forward, with such observations as may appear necessary, every representation which such state prisoner may from time to time be desirous of submitting to the Governor General in Council." § 6. "Every officer in whose custody any state prisoner may be placed, shall, as soon after taking such prisoner into his custody as may be practicable, report to the Governor General in Council, whether the degree of confinement to which he may be subjected, appears liable to injure his health, and whether the allowance fixed for his support, be adequate to the supply of his own wants and those of his family, according to their rank in life."

§ 7. "Every officer in whose custody any state prisoner may be placed, shall take care that the allowance fixed for the support of such state prisoner, is duly appropriated to that object."

§ 8. "The provisions contained in Sections 3, 4, 5, 6, and 7, of this regulation, are hereby declared to be applicable to all persons who are now confined as state prisoners under the authority of Government, within the territories subject to the presidency of Fort William."

§ 9. "Whenever the Governor General in Council, for the reasons declared in the preamble to this regulation, shall judge it necessary to attach the estates or lands of any zemindar, jageerdar, talookdar, or other person, without any previous decision of a court of justice, or other judicial proceeding, the grounds on which the resolution of Government may have been adopted, and such other information connected with the case as may appear essential, shall be communicated, under the hand of one of the Secretaries to Government, to the judge and magistrate of the district, in which the lands or estates may be situated, to the provincial court of appeal and circuit, and to the sudder dewanny adawlut and nizamat adawlut."

§ 10. "*First.* The lands or estates which may be so temporarily attached, shall be held under the management of the officers of Government in the revenue department, and the collections shall be made and adjusted on the same principles as those of other estates held under khas management. *Second.* Such lands or estates shall not be liable to be sold in execution of decrees of the civil courts, or for the realization of fines or otherwise, during the period in which they may be so held under attachment. *Third.* In the cases mentioned in the preceding clause, the Government will make such arrangement as may be fair and equitable for the satisfaction of the decrees of the civil courts."

§ 11. "Whenever the Governor General in Council shall be of opinion that the circumstances which rendered the attachment of such estate necessary, have ceased to operate, and that the management of the estate can be committed to the hands of the proprietor without public hazard or inconvenience, the revenue authorities will be directed to release the estate from attachment, to adjust the accounts of the collections, during the period in which they may have been superintended by the officers of Government, and to pay over to the proprietor the profits from the estate, which they may have accumulated during the attachment."

Those in custody of any other public officer to be visited by persons specially nominated.

Section 5. Representations made by state prisoners, to be submitted to Government.

Section 6. Early report to be made to Government, regarding the confinement, health, and allowances of state prisoners.

Section 7. Allowance to be duly appropriated.

Section 8. The provisions contained in § 3 to 7, applicable to all persons now confined as state prisoners.

Section 9. Rules for the attachment of lands by the orders of Government.

Section 10. Lands so attached, to be placed under the management of the revenue department; And not liable to be sold.

What arrangement to be made in such instances.

Section 11. Rules to be observed in cases where Government may order the release of an estate from attachment.

*Ferries.*

Rules for the management of ferries, which were stated in the 3d vol. of this Analysis, have been superseded by new rules, contained in R. 6, 1819. Reasons noticed in preamble to that regulation.

Section 2. Regulation 19, 1816, rescinded.

Superintendence of the public ferries vested in the magistrates and joint magistrates.

Section 3. Description of public ferries. Magistrates and joint magistrates interdicted from assuming the charge of unassessed ferries, unless specially authorized. Lists of proposed ferries to be submitted to Government, through the superintendents of police.

Section 4. Magistrates and joint magistrates empowered to appoint persons to the charge of ferries, and to regulate the rates of toll, number of boats, &c. In what cases magistrates or others in charge of public

The rules contained in Regulation 19, 1816, "for the better management of ferries, and for levying a toll on the passage of persons and property over rivers and lakes" having partly in view "the improvement of the public resources," were stated in the third volume of this Analysis, under the head of *Toll on Canals; and Ferries*. But these rules, in their general operation, not having been attended with the advantages contemplated by Government in enacting them; and it appearing expedient to restrict the interference of the officers of Government, in regard to ferries, to objects connected with the maintenance of an efficient police, the safety and convenience of travellers, and the facility of commercial intercourse; it has been deemed proper to place such ferries as may be regulated for these purposes, under the exclusive charge of the magistrates and joint magistrates. The following rules, which are now in force, were accordingly enacted in Regulation 6, 1819.

§ 2. "*First*. The provisions of Regulation 19, 1816, shall be rescinded, and shall cease to have effect from the following dates; viz.

In those districts in which the Bengal era is current, from the date of the promulgation of this regulation.

In those districts in which the Willaitee era is current, from the commencement of the ensuing Willaitee year, 1227.

In those districts in which the Fussily era is current, from the commencement of the ensuing Fussily year, 1227."

*Second*. From the several dates above specified, the collectors of revenue will refrain from exercising any interference with the public ferries, the immediate superintendence of which shall be vested in the magistrates and joint magistrates." § 3. "*First*. No ferries shall be hereafter considered public ferries, except such as may be situated at or near the sudder stations of the several magistrates or joint magistrates, or such as may intersect the chief military routes, or other much frequented roads, or such as from special considerations it may appear advisable to place under the more immediate management of the magistrates and joint magistrates. *Second*. The Government reserves to itself the power of determining from time to time what ferries shall under the preceding rule, be deemed public ferries, and as such, shall be subject to the immediate control of the magistrates and joint magistrates; and no magistrate or joint magistrate shall, without previous authority from Government, assume the management of any ferry which may not have been let in farm or held khas, or otherwise subjected to assessment by the collectors, under the provisions of Regulation 19, 1816. *Third*. It will be the duty of the several magistrates and joint magistrates to prepare lists of the ferries which in their judgment should, under the foregoing rules, be considered to be public ferries, and transmit them, as soon as prepared, through the superintendents of police, for the information and orders of Government." § 4. "*First*. The power of appointing proper persons to the charge of the public ferries is vested in the magistrates and joint magistrates, who are authorized, from time to time, to issue such orders as they may judge expedient, for limiting the rates of toll to be levied at each ferry, for regulating the number and description of boats to be maintained, for preventing exactions, and generally for promoting the efficiency of the police, and the safety and convenience of the community. *Second*. On proof of any wilful breach of those rules, or of other misconduct on the part of the manjees or other persons in charge of the public ferries, the magistrates and joint

magistrates are empowered (independently of any punishment, to which the parties may subject themselves under the general regulations,) to remove such individuals and to appoint others in their room. *Third.* The manjees or other persons who may be vested with the charge of public ferries, are to engage to cross free of toll the troops of Government, with their baggage and military stores, as well as all police and other native officers of Government who may be actually employed on the public service." § 5. "A list of all public ferries, bearing the signature of the magistrate or joint magistrate, shall be constantly stuck up in some conspicuous place in their cutcherries, and in that of the collector of the district, and likewise in the thannah within the jurisdiction of which they may be situated." § 6. "*First.* Such ferries shall exclusively belong to Government, and no person shall be allowed to employ a ferry-boat plying for hire at or in their immediate vicinity, without the previous sanction of the magistrate or joint magistrate: provided however, that due attention shall be paid to all claims for compensation, which may be preferred by individuals, for any loss which may be sustained by them, in consequence of the extension of the authority of Government to ferries hitherto under their private management, and which may not have been heretofore let in farm or held khas, or otherwise deemed subject to assessment on account of Government. *Second.* Claims of that nature shall be enquired into by the magistrates and joint magistrates, and their opinion on the merits of each case, shall be reported through the channel of the superintendents of police, for the consideration and orders of Government." § 7. "*First.* In assuming the management of public ferries, the general objects of the magistrates and joint magistrates shall be, the maintenance of an efficient police, the safety and convenience of travellers, the facility of commercial intercourse, and the expeditious transport of troops. For the above objects, they shall be careful to provide or cause to be provided safe and commodious boat; they shall fix the rates of toll on a very moderate scale, in no case exceeding, without an indispensable necessity, the rates which prevailed previous to the enactment of Regulation 19, 1816; they shall adjust the modes of payment so that the tolls may bear as lightly as possible on the poorer classes of the community, and by leaving a fair profit to the individual who may be chosen for the immediate charge of the ferries, they shall endeavour to secure, as far as possible, the services of respectable and competent persons. *Second.* No collections shall be taken on account of Government, from the proceeds of any ferry, until the above objects are fully secured; and if in any case there shall remain a clear surplus profit, after providing adequately for those purposes, the amount collected shall be applied solely to the furtherance of similar objects, such as the repair or construction of roads, bridges, and drains, the erection of suracees, or other works of a like nature. *Third.* In cases of the latter description, viz. those in which the receipts of any ferry shall be sufficient to afford a surplus revenue as abovementioned, the magistrate or joint magistrate, having previously received special authority from Government in that behalf, may and shall require the person holding or applying for the charge of the ferry, to enter into an engagement of the payment, by monthly or quarterly instalments, of such a sum of money as with reference to the estimated surplus, may appear justly demandable, without risking the primary objects above indicated; and if any person in charge of a ferry shall refuse to enter into an engagement as aforesaid, and shall not assign sufficient cause for such refusal to the satisfaction of the magistrate or joint magistrate, it shall be competent to such officer, to transfer the charge of the ferry to any other respectable and competent person: provided however that no person in charge of a ferry who shall otherwise conduct himself to the magistrate's satisfaction, shall be removed

lic ferries may be removed from their situations. Specification of persons to be exempted from toll.

Section 5. Lists of public ferries to be stuck up in the magistrates' and collectors' cutcherries, and in the thannah.

Section 6. The exclusive right to public ferries belongs to Government. Proviso, in cases of compensation claimed.

Such cases to be investigated and reported to Government.

Section 7. Specification of objects to which the magistrates and joint magistrates are to attend, in assuming charge of the public ferries.

No collections to be made on account of Government, until the objects specified in the preceding clause have been attained. Surplus collections how to be appropriated. Rule of proceeding in cases where a public ferry shall yield a surplus revenue. Persons in such cases to enter into an engagement for the payment of instalments. How the magistrate or joint magistrate is to proceed when the

person shall refuse to enter into such an engagement. The mode of paying the collections realized under this Section, to be adjusted under the orders of Government. Proviso.

Section 8.  
Security for good behaviour to be given by persons in charge of public ferries, as well as for the punctual performance of engagements.

Section 9.  
Persons allowed to relinquish the charge of ferries on giving ten days' notice to the magistrate and on payment of arrears. Proviso regarding the transfer of boats.

Section 10.  
How a magistrate or joint magistrate is to proceed for the recovery of the rent of a public ferry from a defaulter.

Section 11.  
Persons on receiving charge of public ferries to be informed of the discretion reserved to the magistrate, for reducing tolls, or extending exemptions.

Proviso, in case a person may wish to relinquish charge.

Section 12.  
Further proviso in such cases.

Persons unwilling to pay the fixed rent of a ferry, required, how to proceed.

Such person may be removed, should their offers be

from his charge under the above rule, excepting at the expiration of the Bengal or Fussyly year, according to the era current in the province. *Fourth.* The mode in which collections made under this section shall be paid, whether into the treasury of the magistrate or collector, or any other public officer, shall be determined by the orders of Government, and adjusted with the party by the magistrate or joint magistrate, at the time of giving him charge of the ferry or ferries entrusted to him: provided however that as a general rule, all persons in charge of ferries subject to the payment of a rent, shall on discharging any instalments, receive and be directed to require receipts for the amount, which shall be countersigned by an European officer of Government." § 8. "The magistrate or joint magistrate shall be competent to take security for the good behaviour of persons vested with the charge of public ferries, and in the case of persons who may, under the provisions of the foregoing section, enter into an engagement for the payment of a yearly rent, it shall likewise be competent to the officers aforesaid to require adequate security for the punctual payment of the amount, as it may become due." § 9. "Any person in charge of a public ferry, whether subject to the payment of rent or not, shall be at liberty to relinquish the charge on giving ten days' notice to the magistrate or joint magistrate, and on paying any arrears that may be due: provided however, that it shall in such case be competent to the magistrates or joint magistrates to require any person who may so relinquish the charge of a ferry, or who may be removed from such charge, to transfer the boats belonging to the ferry, to the person who may be appointed to succeed him, at a fair valuation, or to retain the boats until others can be provided, making a suitable compensation to the owner."

§ 10. "If any person having charge of a ferry, and subjected to the payment of a yearly rent, shall fail to discharge the amount as it may become due, he shall be liable to immediate removal, and the magistrate or joint magistrate, after ascertaining the arrear and certifying the default, will proceed to the recovery of the amount from the party and his surety, in the manner prescribed by Section 7, Regulation 18, 1817, for the recovery of public money embezzled by native officers of the civil and criminal courts; giving at the same time a liberal consideration to any pleas which the party may urge in explanation of the default." § 11. "All persons vested with the charge of public ferries, whether paying any rent or not, shall on accepting the situation, be distinctly apprized, that the magistrates and joint magistrates reserve to themselves the power of reducing the rates of toll, or extending the exemptions from the payment of it, at such times and in such manner as shall appear proper, with a view to the public good: provided however, that in the event of any such measures being adopted, the party in charge of the ferry may relinquish the charge, and the magistrate shall, in such case, purchase from him at a fair valuation, or cause his successor so to purchase, all boats belonging to the ferry, with all articles thereunto appertaining."

§ 12. "*First.* Provided also, that whenever a magistrate or joint magistrate shall adopt such measures, in regard to any ferry for which a rent shall have been required from the person vested with the charge of it; the said magistrate or joint magistrate shall, in communicating his orders to the party aforesaid, at the same time apprise him, whether he designs to allow any and what reduction in the stipulated rent. *Second.* If the person in charge of the ferry shall not be willing or able to pay the rent so fixed by the magistrate or joint magistrate, he shall nevertheless immediately carry the magistrate's or joint magistrate's order into effect, and shall state in his reply to those orders the amount of rent which he may be willing to continue to discharge. Should the offer of the party in charge of the ferry appear inadequate, it shall be competent to the magistrate or joint magistrate, to remove

him, and to place another person in charge of the ferry, purchasing the boats and their appurtenances as aforesaid ; but the person so removed, shall be required to pay, for the days during which he may retain charge, subsequently to the date of his reply to the magistrate's order, a proportionate rent, calculated at such rate only as he may have tendered." § 13. "*First.* The foregoing rules are intended to apply exclusively to those ferries which may be declared to be public ferries ; with regard to all other ferries, the magistrates and joint magistrates shall not interfere with them, further than may be necessary for the general maintenance of the police, and for the safety of passengers and property. *Second.* Provided however, that if any person shall be drowned or exposed to imminent danger, or if any property shall be lost or damaged by the oversetting or sinking of a ferry boat, and it shall be established on enquiry before the magistrate or joint magistrate, that the boat was overloaded with passengers, or property, or was insufficiently manned, or was out of repair at the time of the accident, the manjee of the ghaut or boat, if duly convicted of permitting his boat to be overloaded, or to be insufficiently manned, or out of repair, shall be liable to such punishment, as the magistrate or joint magistrate may think proper to impose, not exceeding imprisonment for six months, or a fine of two hundred rupees." § 14. "An annual statement made up to the 1st of January of each year, shall be forwarded by the several magistrates and joint magistrates to the superintendents of police, exhibiting the number of public ferries in each district, the amount of the net assessment realized from such of them as may be subject to assessment, and the purposes to which the amount so realized may have been appropriated under Clause Second, Section 7, of this regulation. In submitting to Government the results of those statements, the superintendents of police will offer any suggestions which may appear to them calculated to facilitate or to improve the practical operation of the system."

deemed inadequate.

Section 13.  
Magistrates to interfere only with public ferries, except on particular occasions.  
Proviso, in cases of danger to persons or property.

Punishment to which manjees are liable on conviction in such cases.  
Section 14.  
Annual statements of public ferries to be forwarded by the magistrates to Government.



## APPENDIX.

SINCE the completion of the present volume, the following regulations, which are connected with the subjects of it, have been received from India ; and are therefore added, with a view to bring up the compilation to as recent a period as circumstances admit. The contents of these regulations will also be noticed in the Index.

The following regulations received from India, since this volume was completed.

### “ A. D. 1820. REGULATION VII.”

R. 7, 1820.

“ *A Regulation for altering the punishment and form of trial, in cases of Dhurna : passed by the Governor General in Council, on the 8th December, 1820.*”

Title.

“ The offence denominated Dhurna implies, in its received acceptation, the practice of illegal duress by individuals, for the extortion of money, or for the recovery of debts without authority from the civil magistrate ; and also, without such authority, for retaining or recovering the possession of land, or for carrying any other point of real, imaginary, or pretended interest or right. On the trial of the offence by a court of circuit, the existing regulations require, that, instead of the futwa of the Mohummudan law officer, usual in other trials, a bebusta shall be taken from the pundit of the provincial court, as to the fact of dhurna (according to the received acceptation) being established, or not, by the evidence adduced. But the pundit of the provincial court being stationary at the sudder station of the court, this mode of trial has been found to be attended with great delay ; as well as otherwise unsatisfactory. And it has been ascertained that the act of dhurna is a misdemeanor punishable in Mohummudan law, under the head of zulm, or oppression. It having accordingly been deemed advisable, that in trials before a court of circuit, for dhurna, a futwa should be given by the Mohummudan law officer, as in other trials, in lieu of the bebusta hitherto taken ; and it having also been deemed advisable that the magistrates should have power to pass sentence in minor cases of the offence of dhurna ; and further, that the existing penalties annexed to the offence should be revised and simplified ;

Preamble.



the following rules have been enacted, to be in force from the date of their promulgation, throughout the provinces immediately subject to the presidency of Fort William."

Section 2.  
Notice of  
rules rescind-  
ed.

Section 3.  
Magistrates  
how to proceed  
on charges of  
dhurna.

§ 2. "Sections 11 and 12, Regulation 21, 1795; Regulation 5, 1797; Section 6, Regulation 8, 1799; Sections 9 and 10, Regulation 3, 1804; and such other provisions in the existing regulations, as relate to the offence of dhurna, are hereby rescinded." § 3. "On a complaint in writing being presented to a magistrate against any brahmin, or brahmins, or against any other person or persons of whatever description, for sitting dhurna, the magistrate, upon oath being made to the truth of the information, shall issue a warrant or summons, (as the case may require) under his seal and signature, for the apprehension, or appearance before him, of the person or persons thus complained against. On the accused being brought before the magistrate, he shall enquire into the circumstances of the charge, and examine the accused and the complainant; and also such other persons (whose depositions are to be taken on oath) as are stated to have any knowledge of the misdemeanor alleged; and commit their respective depositions to writing; and after this enquiry, if it shall appear to the magistrate that the misdemeanor charged was never committed, or that there is no ground to believe the accused to have been concerned in committing it, the magistrate shall cause him (or them) to be forthwith discharged; recording his reasons for the same. On the contrary, if it shall appear to the magistrate, that the misdemeanor was actually committed, and that there are grounds for believing the accused to have been concerned in the commission of it; the magistrate shall (except in the cases mentioned in Section 7) cause the accused to be committed to prison, or held to bail (according as in his discretion he shall judge proper) for trial at the next session of the court of circuit; and shall bind over the complainant to appear and carry on the prosecution, and the witnesses to attend and give their evidence." § 4. "The trial of persons charged with dhurna, shall take place before the court of circuit, in the same mode as is prescribed for other trials by the existing regulations; and in lieu of the bebusta hitherto taken from the pundit of the provincial court, the Mohummudan law officer of the court of circuit shall write his futwa, declaring whether the offence charged is established, or not, against the accused." § 5. "On conviction of the offence of dhurna before a court of circuit, the penalties adjudicable shall be as follow; namely, imprisonment in the civil jail for a term not exceeding one year, and fine not exceeding one thousand rupees, commutable, if not paid, to further imprisonment for a term not exceeding one year." § 6. "Trials held before a court of circuit in cases of dhurna, shall be referrible to the nizamat adawlut, or not, according to the rules applicable in other trials."

Section 4.  
Mode of trial  
for dhurna, be-  
fore court of  
circuit.

Section 5.  
What punish-  
ment for dhur-  
na adjudicable  
by court of  
circuit.

Section 6.  
Trials for  
dhurna when  
referrible.

Section 7.  
In what cases  
of dhurna ma-  
gistrates may  
pass sentence  
and to what  
extent.

§ 7. "It shall be competent to the magistrates, in charges for the offence of dhurna, which they may be of opinion, from the circumstances, do not require commitment to the court of circuit, to hear the evidence against and for the accused; and if they consider the accused to be convicted, to pass sentence of fine, not exceeding two hundred rupees; commutable, if not paid, to imprisonment in the civil jail for a period not exceeding six months."

## " A. D. 1821. REGULATION I."

R. 1, 1821.

*" A Regulation for the appointment of a special commission in the ceded and conquered provinces, for the investigation and decision of certain claims to recover possession of land illegally or wrongfully disposed of by public sale, or lost through private transfers effected by undue influence ; and for the correction of the errors, or omissions, of the proceedings adopted by the revenue officers in regard to the record and recognition of proprietary rights, and the ascertainment of the tenures, interests, and privileges, of the agricultural community : passed by the Governor General in Council on the 13th of January, 1821."* Title.

" It has appeared that in the first seven or eight years after the acquisition of the ceded provinces by the British Government, the native officers of Government, their relations, connections, and dependents, taking advantage of the novelty of the British rule, of the weakness and ignorance of the people, and (in some cases) of the culpable supineness and misconduct of the European functionaries under whose authority they were employed, contrived by fraudulent and iniquitous practices to acquire very extensive estates in several of the provinces in question, more especially in the districts of Allahabad, Cawnpore, and Goruckpore ; thus wrongfully depriving of their just rights a great number of the ancient land owners, and reducing them and their numerous dependents to ruin and misery. These abuses have been chiefly practised through the perversion, to the purposes of chicanery and fraud, of the rules enacted for the collection of the government revenue, more especially the provisions relating to the public sale of land for arrears. Under cover of these rules, but contrary to the true intent and meaning of the law by which (though a considerable discretion was left to the revenue authorities) the measure of a public sale was principally designed for cases of embezzlement, contumacy, or fraud, many estates were sold from which no balance (or a very trifling balance) was due, or on which the arrear accrued without any embezzlement, or wilful default on the part of the sudder malgoozar ; and others were disposed of without an observance of the prescribed forms. In several instances too a recourse was had to the measure of a public sale without any proper ascertainment of the liability of the proprietors, or the fact of their being under direct engagements to Government. Thus some estates would appear to have been brought to sale for arrears, although the parties, responsible to Government for the revenue, held only a very limited interest in the mehal sold, or were persons possessing no fixed right of property therein, who had been recorded as proprietors and admitted to engagements on the faith of fraudulent and abusive statements ; and some appear to have been sold, of which the tehseeldars had themselves retained the immediate management, the ostensible malgoozars being creatures of their own, or names purely fictitious being entered on the records. Under such circumstances sales were often effected through the misrepresentations of the tehseeldars, made in collusion with the recorded malgoozars, for the purpose of acquiring for one or other of the parties an ostensible title to the property by purchase at public sale. In like manner there is reason to believe that persons erroneously recorded as the sole proprietors of mehals, in which they possessed either no fixed property or a very limited interest, have in several instances been induced fraudulently to execute deeds of sale in favor of public officers of Government, their relations or dependents, purporting to convey Preamble.

the exclusive property of the lands comprized in the mehal for which they were under engagements, and that on the faith of such deeds the purchasers have been recorded as the sole proprietors thereof. In almost all these cases, the purchasers, whether by public or private sale, taking an illicit advantage of the ignorance of the village occupants, and of their unacquaintance with the regulations, and the forms of judicial practice, have effected an extensive usurpation of private rights, and the consequent annihilation of institutions by which the village communities have immemorially been regulated. There is reason to believe that the same evils have very generally occurred in all cases of sale for the recovery of arrears, even where the transfer of the estate held by the alleged defaulter was legal and valid : the purchasers having usually claimed to possess the whole of the lands comprized in the mehal sold, without being subject to any of the restrictions and conditions arising out of private rights, which attached to the estate of the defaulter, and having frequently succeeded in establishing such claims to an extent not warranted by law. Thus in almost every mehal sold in liquidation of arrears of revenue, many village zemindars, putteedars and other proprietors, though in no degree parties to the engagement of the defaulting malgoozar, and holding under tenures of such a nature as not to be affected by the sale of the estate possessed by such defaulter, further than that, by such sale, the obligations of the under-tenants towards the defaulter are transferred to the purchaser, have been deprived of their just rights, and either ousted from the lands, or reduced to the condition of tenants at will. There is further reason to believe, that, independently of cases of abusive alienation, the village maliks and others have in many cases sustained serious injury, through the insufficiency of the enquiries instituted by the revenue officers, in regard to the tenures under which land and the rights connected with land are held, and from the errors and defects of the public records relating to such matters : that in consequence of such errors and defects many persons justly entitled to engage in chief for the revenue of the lands occupied by them, have been excluded from engagements in favor of persons erroneously recorded as proprietors, and that the real nature and extent of the interests actually possessed by different individuals and classes being ill ascertained and defined, great facilities have been afforded to chicanery and fraud : which have led, and are likely still further to lead, to consequences greatly injurious to individuals, and seriously affecting the peace and good order of the country. The persons who have suffered by the aforesaid abuses are for the most part poor and ignorant men ; unaccustomed, under the former government, to any regular system of law ; little acquainted with the principles of the British code, or the regular forms of British judicial proceedings ; incapable of availing themselves of the protection it was designed to afford ; and possessing not the means of securing the aid of individuals better informed ; while those opposed to them are for the most part men of wealth and power, who acquired their possessions through the influence of official station, and by an abusive exercise of the authority vested in them as officers of Government, who are well acquainted with all the forms of law as administered in our courts, and who possess ample means of securing the retainers of the adawlut in their service. These indeed are themselves generally supposed to be much interested in maintaining the sales in question, and in supporting all the claims of the purchasers and the sudder malgoozars. Moreover, in all suits brought to annul sales made for the recovery of arrears of revenue, the collector on the part of Government must, under the existing code, be made one of the defendants in the case along with the purchaser, and various other forms must be observed, which are likely to defeat the just claims of the ousted

proprietors. The prosecution too, in ordinary course of regular suits in the adawlut, necessarily involves considerable delay and expense; requiring, besides a long attendance at the court, the payment of various fees, the employment of vakeels, and other expenses, which would alone operate greatly to prevent the complainants in question from seeking redress in that manner, even if the cases were such as to admit of easy decision by the regular tribunals. But the investigation of the abusive alienations and usurpations in question will apparently require a thorough research into voluminous and complicated revenue accounts, minute local enquiries, and a free and constant communication with the parties concerned, and with the local officers: and an active enquiry into all the circumstances of the transactions, without reference to the mere points stated by the plaintiffs; such as the constitution of the established courts would not admit of their pursuing. Besides, the existing regulations do not vest the civil courts with so extensive a discretion in the adjustment of doubtful claims, and in the relief of parties suffering hardships, as the cases in question appear to demand. Further, the regulations applicable to the provinces in question having been necessarily founded on incomplete information, are in many respects defective; so that several points requiring a distinct declaration of the views and intentions of the legislature, relative to the privileges designed to be vested by a settlement in the sudder malgoozar, or conveyed to the purchaser by a public sale, as well as in regard to the extent of the authority vested in the revenue officers in deciding on the mode in which the public revenue is to be managed or collected, still remain to be settled; and cannot yet be settled by a general legislative enactment, without risk of error. The proceedings of the established courts must necessarily partake of any defects belonging to the law, which it is their duty to administer; and it would be obviously inconsistent with every sound principle to grant a general discretion to those courts to deviate from the law on individual views of expediency or justice. The established courts consequently are not so constituted as to provide an adequate remedy for the evils above specified, which can be completely corrected only by a tribunal exercising a larger discretion, and acting in more immediate communication with the Government, than could with propriety be allowed in the case of the courts established for the general administration of civil justice. Even too if these courts were so constituted as adequately to provide for the trial and decision of the cases in question, yet the duty could not be completed by them for a long period of time, without an entire interruption of their ordinary functions; while the parties injured are equally incapable of supporting the expense of a protracted litigation in the adawlut, and of defending themselves in that course of proceeding against the arts and intrigues of their powerful adversaries. In consideration of the above circumstances, it has appeared to the Governor General in Council to be essentially necessary to the ends of justice, that a special commission, with large discretionary powers, and with full authority to regulate its proceedings according to the exigencies of the cases brought before it, should be constituted for the purpose of investigating the cases above described; of restoring to their just rights the zemindars and other proprietors, who have been wrongfully dispossessed; of defining and fixing the real nature and extent of the interests and title conveyed to the purchasers, in cases in which sales may be upheld; of restoring proprietors whose estates may, in consequence of the errors in the administration above noticed, have been transferred to another on account of a trifling balance, or for a trifling consideration, making due compensation to the present possessors; of granting redress to persons, who may have lost the possession or management of their estates without just cause, under the operation of a public sale, or through any act of a revenue officer, or who may have

been wrongfully excluded from engagements with Government, and of making an equitable adjustment of doubtful claims ; including the relinquishment, upon due compensation, of rights acquired or held under the strict operation of the law, by means inconsistent with equity and justice, or involving excessive hardship to the sufferers. The following rules have accordingly been enacted, to be in force from the period of their promulgation."

Section 2.  
A special commission to be constituted for the purposes described.

Section 3.  
Specification of the claims cognizable by the commission.

In what cases sales of estates by public auction may be annulled.

In what cases private transfers of estates may be annulled.

conditional assignments of lands, the as-

§ 2. "A special commission, consisting of one or more members, as the Governor General in Council may determine, shall be constituted for the purposes described in the preamble to this regulation, to be denominated the Mofussil Special Commission acting under the provisions of Regulation 1, 1821." § 3. "*First.* The said commission shall receive, investigate, and determine, all claims to recover possession of land, lying within such limits as the Governor General in Council may from time to time appoint, which may have been lost through public sales made in liquidation of arrears of revenue, or through private transfers ; such sales and transfers having been effected by the undue influence of a public officer, from the period of the cession or conquest (according as the lands may be situate within the ceded or within the conquered provinces) and the expiration of the Fusslee year 1217, corresponding with the 13th September, 1810. *Second.* In cases of estates, disposed of by a public sale for arrears of revenue, if it shall appear to the commission, after due enquiry, made in the manner hereinafter specified, that no part of the balance for which the sale may have been advertised, or the interest payable thereon, was due at the time of the mehal being sold, *i. e.* the lot being knocked down, or that the amount so due was inconsiderable, or that the amount due was not regularly demanded, or that the arrear did not originate in any fault or neglect of the defaulter, or that the defaulter had not sufficient opportunity of payment given to him before the sale, or that sufficient authority for the sale was not received from Government, or the board, as the case may be ; or that regular notice of the intended sale was not given to the proprietors and to the community, or that the sale was not made according to the regulations at the time and place advertised, and with due publicity and full freedom, or that the purchaser was an officer on the collector's establishment, or in any way employed in the collection of the public revenue within the district, or in the private service of the collector, or the surety of such officer, or a relation, dependent, or connection of such officer or surety, or that the estate was purchased in a fictitious name, or that the price paid was greatly inadequate, or generally that the sale was oppressive and produced by undue influence, or that an undue advantage was in any respect taken of the ignorance of the persons whose estate may have been sold ; in all and each of these cases it shall and may be lawful for the aforesaid commission to pass judgment, annulling the sale, and directing the restoration of the original proprietors, or such of them as may have lost possession under the operation of the sale, or of their representatives. *Third.* It shall likewise be competent to the commission to annul private transfers, whether effected by sale, gift, renunciation, or whatever mode of conveyance, in cases in which they shall see reasonable ground for believing that the purchase or acquisition was effected by violence, extortion, or oppression ; or by undue influence of any officer of Government in whatever department, in the district within which the land transferred may be situated, or of the surety of such officer, or of any relation, connection, or dependent of such officer or surety ; or that any fraud was practised by the purchaser, or undue advantage taken by him of the ignorance or fears of the seller. *Fourth.* It will further be competent to the commission, in cases of mortgage, trust, or other limited or conditional assignment, to restore the assigner to his lands on any of the

grounds specified above, as reasons for annulling private transfers, or on proof that the period of the assignment has expired, or that it is otherwise justly redeemable, or that the original consideration for which it was made is greatly inadequate, compared with the advantage derived by the assignee.

signer may be restored to possession.

*Fifth.* The commission aforesaid shall further be competent to receive, investigate, and determine all claims for the recovery of lands belonging to a mehal, the interests of the sudder malgoosar of which may have been disposed of by public sale, or by private transfer, or assignment, within the period specified in the first clause of this section, or for the recovery of any interest in such lands, or the rent or produce thereof; and if it shall appear that the claimant was in possession of the property claimed by him at the time of the said sale or transfer, and that the said sale or transfer was invalid, or that, though valid, it did not legally divest the claimant of the rights and interests possessed by him at the period aforesaid, and that he has not subsequently been divested of those rights and interests in a legal manner, that is to say, by some judicial award, or some voluntary act of the party involving the transfer, renunciation, or relinquishment of his rights and interests, or that it would involve excessive hardship to the party, or be inconsistent with equity and justice to maintain the award or act by which he may have been divested of the rights and interests possessed by him as above; then and in that case it shall and may be lawful for the commission to adjudge the claimant to be restored to the lands or other property claimed by him, or to any portion thereof to which he may appear to be entitled, and to define and declare the conditions on which he is to hold such lands or property.

In what cases the special commission may investigate and determine the rights and interests of which individuals may have been deprived in any mehal by the sale, transfer, or assignment of the interests of the sudder malgoosar of such mehal.

*Sixth.* It shall likewise be competent to the commission to receive, investigate, and determine, all claims for the recovery of lands, or rights connected with land, the possession of which may have been lost, without just cause, through or in immediate consequence of any act done, or record prepared, filed, or authenticated, by a revenue officer, within the period above specified, and to restore the claimants to the possession of any lands, or rights connected with lands, which they may have lost in the manner aforesaid. It shall also be competent to the commission to receive, investigate, and determine all claims to be admitted to engage in chief with Government, which may be preferred by persons aggrieved by any act done, or proceeding held, by a revenue officer, within the aforesaid period, relative to the recognition of proprietary rights, and the admission of parties to engagements with Government; and if it shall appear that the decision of the revenue authorities, in regard to the recognition of a proprietary title to any mehal or portion of a mehal, or the selection of the party admitted to engage, was erroneous or improper, it shall be competent to the commission to reverse or modify the orders passed by the revenue authorities, and to restore to the management of the mehal any person or persons, who may appear best entitled to engage directly with Government. *Seventh.* On adjudging the restoration of any person to the possession or management of the lands claimed by him, the commission will invariably declare, as distinctly as possible, the nature and extent of the interests vested in such claimant, with a view to the restoration and future security of subordinate tenures; and in all cases in which the commission may investigate and determine claims to land, or rights connected with land, under the rules contained in the preceding sections, it shall and may be lawful for them to cause the names of all persons found in the *bonâ fide* possession of the land in dispute, or of land included in the same mehal with the lands in dispute, or enjoying the rents or produce thereof, under a title of hereditary property, to be entered on the public records, and to define and declare the extent of the interest, and the conditions of the tenures possessed by such proprietor, as far as the same may be duly ascertained, and

Special commission further empowered to investigate claims for the recovery of land or rights connected with land, the possession of which may have been lost without just cause in consequence of the acts or proceedings of revenue officers.

In cases adjudged by the special commission, the interests vested in the claimants to be distinctly defined.

As well as the interests of individuals in possession of the land in dispute, or of land included in the same mehal.

The operation of the foregoing clauses extended to persons holding under a title derived from the person originally benefitting by the sale or transfer.

Proviso.

Section 4.

In what cases the commission are to endeavour to effect a compromise between parties.

Compensation to be awarded by the commission in what cases.

Proviso.

Section 5.

The jurisdiction of the commission extended to cases already decided by the courts of justice, or depending before them.

Local jurisdiction of the commission to be from time to time fixed by the Governor General in Council, and notice of the same how to be given. Courts of justice how to proceed in suits before them which may be cognizable by the commission.

Commission and fees in such suits how to be disposed of.

similarly to declare the nature and extent of the tenures and interests of all persons occupying the land in dispute, or lands belonging to the same mehal.

*Eighth.* The operation of the foregoing clauses shall not be confined to cases in which lands or rights connected with land sold, transferred, alienated, or usurped, as above, may be held by the person originally benefitting by the sale, transfer, alienation, or usurpation; but shall equally extend to those in which the said lands or rights may be held under a title derived from such person: provided, of course, that in cases in which it may appear that the person so holding under a derivative title was in no degree concerned in, or cognizant of, the original wrong—the claims of such person to compensation for any loss he may sustain under the operation of the present regulation, shall be held entitled to a very liberal consideration.” § 4. “*First.* In all cases whatsoever of the description specified in the preceding section, in which it may appear to it to be clearly equitable to afford the claimant relief, though not entitled to a remedy under the existing law, or in which the points at issue may be doubtful, and the means of arriving at a satisfactory conclusion may not exist, it shall be competent to the commission to interpose its authority, to induce the parties to compromise their contested claims, or such interposition failing, to make such award relative to the rights and interests of the parties, as equity and good conscience shall appear to them, upon full consideration of all circumstances, to warrant and require. *Second.* In cases in which the commission may deprive any person of rights legally vested in him, under the existing code, or may make award upon doubtful claims, or in which the title of any person, though invalid, may have been acquired by him *bonâ fide* under an express or implied assurance of its validity on the part of the board, the collector, or judge of the district, it shall be competent to the commission to adjudge compensation in money from the treasury of Government: provided however, that in cases in which the compensation assigned to any individual shall exceed the sum of rupees one thousand, the sanction of Government shall be necessary to authorize the disbursement.”

§ 5. “*First.* The commission shall be competent to take cognizance of cases of the nature above described, relating to lands within the districts or portions of districts to which its jurisdiction may extend, although the same may have been finally decided in the courts of judicature; and likewise to recal all such cases, relating to such lands, as may now be pending, or may hereafter be instituted in the said courts, either on the application of the parties, or of its own motion; and the said courts shall, on application of the commission, transmit to it all the proceedings and papers relating to suits so removed. *Second.* The jurisdiction of the commission shall extend to such districts or portions of districts, and for such periods as the Governor General in Council may from time to time direct: notice of the orders of Government vesting the commission with local jurisdiction, or withdrawing jurisdiction given, to be published by proclamation within the several pergunnahs to which they may relate, and to be communicated through the sudder dewanny adawlut to the provincial and zillah courts concerned. *Third.* Whenever any of the said courts shall be apprized, in the manner aforesaid, of the appointment of the commission to exercise the aforesaid powers within any zillah or other local division, they shall forthwith stay all proceedings in cases of the description above specified, and shall not proceed to the investigation or decision of any such case, until they shall either receive intimation from the commission that it is not its intention to take cognizance of it, or until they shall be apprized by Government that the local jurisdiction of the commission has ceased. *Fourth.* When any suit may be removed by the commission from the court in which it may be pending, the price of the stamp paper used for the plaint or petition of appeal in lieu of the fee payable by

the plaintiff or appellant, on the institution of the suit or appeal, shall be returned to the party by whom the amount may have been disbursed; and the commission, on deciding the suit, shall determine the amount of remuneration to be assigned to the vakeels who may have been employed by the parties in conducting the suit; and any sums which may have been received by the treasurer of the court, on account of the vakeel's fees, shall be kept in deposit until the determination of the commission shall be made known to the court, which shall and may pay the amount awarded by the commission to the vakeels, out of sums deposited by the parties employing them." § 6.

*First.* The commission shall determine, subject to the orders of Government, or of such other authority as the Governor General in Council may direct, its own form of proceeding, the nature of the pleadings, the mode in which they are to be conducted, the paper (stampd or unstampd) to be used, the fees to be levied, and generally the rules of practice to be followed.

*Second.* All processes issued by the commission shall be enforced in the same manner and under the same penalties for disobedience or resistance as processes of zillah courts; and all powers possessed by the zillah courts, in regard to contempts, the summoning and examination of witnesses, and the administration of oaths, shall be vested in the commission; from whose order, in regard to such matters, no appeal shall lie, except to the sudder commission hereinafter mentioned.

*Third.* The commission shall be competent either to execute its own decisions, with the same powers and authority as are vested in the zillah courts; or to require the zillah courts to give effect to such decisions, in like manner as they are required to execute the decrees passed by the provincial courts, or the sudder dewanny adawlut. *Fourth.* The several rules and provisions contained in the existing regulations, relative to the native officers belonging to the zillah courts, shall be applicable to the native officers attached to the said commission, except in cases in which the said commission may, with the sanction of the sudder commission hereinafter mentioned, or of the Governor General in Council, otherwise specially direct.

*Fifth.* Any person giving a false deposition, whether upon oath or huluf namah, relative to any suit or matter depending before the commission, and upon a point material to the issue thereof, shall be held and considered guilty of perjury, and shall be liable to the penalties prescribed for that offence in the regulations; and any person causing or procuring another person to commit the offence of perjury as above described, shall be held to be guilty of subornation of perjury, and punishable under the provisions of the aforesaid regulations. *Sixth.* The commission shall be competent to commit persons guilty of the said offences for trial before the court of circuit, and any magistrate receiving a roobukaree from the commission, containing an order for the commitment of such offenders, shall proceed to give it effect, in like manner as if the commitment were made by himself." § 7. "It shall be the duty of the courts and of the collectors to afford the commission every aid and information that it may require; to serve all processes issued by the commission, which that authority may desire to have served by them, in like manner as if they were issued by themselves; to prepare and transmit to the commission such lists of the cases decided by, or pending before, them as the commission may see occasion to call for; and to furnish all papers and documents which the commission may wish to examine." § 8. "If any doubt shall arise in regard to the course of proceeding to be followed by the established courts, relatively to any suit or other matter of the nature of those cognizable by the aforesaid commission, or on any point connected therewith, it shall and may be lawful for the sudder dewanny adawlut to determine the question, subject to the final orders of the Governor General in Council, to whom the sudder dewanny adawlut shall report the circumstances of any cases

Section 6.  
Form and nature of the proceedings before the commission how to be regulated.

Processes of the commission how to be issued and enforced.

Decisions of the commission how to be executed.

Native officers attached to the commission subject to what rules.

Persons guilty of perjury or subornation of perjury to be punishable under the regulations.

And may be committed by order of the commission for trial before the courts of circuit.

Section 7.  
Courts and collectors to give their aid to the commission.

Section 8.  
If cases of doubt arise between the courts and the commission, the sudder dewanny adawlut to decide, subject to the final orders of Government.



Section 9.  
Powers of the  
commission  
over canoongoes  
and mofussil officers  
of account.  
Section 10.  
Sudder commission to be  
constituted.  
Powers and  
functions of  
sudder commission.

All decisions  
of mofussil  
commission to  
be reported to  
the sudder  
commission,  
and the latter  
empowered to  
revise, modify,  
or annul such  
decisions.  
Parties dissatisfied with  
decisions of mofussil  
commission may appeal to the  
sudder commission.

In cases of a  
difference of  
opinion between  
the members of  
the mofussil  
commission, a  
reference to be  
made to the  
sudder commission.

Cases of peculiar  
importance to be certified to the  
sudder commission.

Who will in  
such cases proceed in  
the same manner  
as in cases  
regularly  
brought before them in  
appeal.  
Provision for  
cases in which  
the sudder  
commission

of that nature that may arise." § 9. "The commission shall and may exercise, within the sphere of their jurisdiction, the same powers and authority over canoongoes, putwarries, and other mofussil officers of account, as the collectors and courts are now authorized to exercise." § 10. "*First.* A commission, to be denominated the sudder or chief special commission acting under the provisions of Regulation 1, 1821, shall be constituted for the purpose of superintending the proceedings of the aforesaid mofussil commission, and for reviewing the decisions passed by it. *Second.* The sudder commission shall consist of two or more such officers as the Governor General in Council may from time to time appoint, and shall, besides the powers exclusively belonging to them, possess and exercise all the powers and authority vested in the mofussil commission. The mofussil commission shall be guided by the instructions and orders of the sudder commission, in like manner as the courts of appeal and zillah courts are guided by the directions of the sudder dewanny adawlut; and the said sudder commission shall further have the power of issuing special instructions to the mofussil commission, in regard to the investigation of cases pending before the latter, whenever, from the representation of the parties or otherwise, they may consider such a measure to be expedient or proper. *Third.* All decisions passed by the mofussil commission shall be reported to the sudder commission, in such manner and form as the latter may direct, or as the Governor General in Council may prescribe; and it shall be competent to the sudder commission, in considering the reports so furnished, to call for the proceedings held by the mofussil commission in any case, and to revise, modify, or annul any order or decision which the mofussil commission may have passed or made. *Fourth.* In cases in which either of the parties may be dissatisfied with the decision passed by the mofussil commission, and may desire to appeal to the sudder commission, the whole of the proceedings held by the former shall be certified to the latter; who will call for such further information and direct such further proceedings to be held, as they may judge necessary or proper. In such cases it shall rest with the mofussil commission to determine, subject to any orders which they may receive from the sudder commission, whether they shall carry their decision into immediate effect, or await the result of the reference to the superior tribunal. *Fifth.* In cases in which the members of the mofussil commission, when consisting of two or more members, may not agree in opinion as to the decision or award to be passed or made in any case, they shall certify to the sudder commission the whole of the proceedings held by them; each member at the same time separately recording his judgment and the grounds of it; and similarly when any difference of opinion shall occur, in regard to the determination of any matter connected with or belonging to any case, pending before or decided by the said commission, a reference shall be made to the sudder commission; and the mofussil commission shall be guided by the directions which it may receive from the said sudder commission. *Sixth.* It shall likewise be the duty of the mofussil commission to certify to the sudder commission any cases of peculiar importance and difficulty, in which it may be desirous of obtaining a decision by the superior tribunal. But in all such cases the mofussil commission shall in the first instance record their own opinion on the merits of the case, and distinctly declare the judgment which they may think ought to be passed. *Seventh.* In cases certified to the sudder commission, under the provisions contained in the two preceding clauses, the sudder commission shall proceed in the same manner as in cases brought regularly in appeal before them; but no decision or award shall be passed or made in such cases by the mofussil commission, unless under instructions in that behalf from the sudder commission. *Eighth.* If in any case the members of the sudder commission shall not agree in opinion as to the decision, award, or

order to be passed or made, and the voices on each side shall be equal, the commission shall suspend its decision and report the circumstance to Government; and it shall in such cases be competent to the Governor General in Council to appoint one or more temporary members of the commission for the determination of the question in dispute. Where a majority of the commission shall concur in one opinion, the decree, award, or order, shall be made according to the resolution of such majority, and shall have the same force and effect as if made by all the members conjointly." § 11. "First. The decisions of the mofussil commission, unless revised and altered by the sudder commission under the rule contained in the third clause of the preceding section, or appealed to the sudder commission within the period of six months from the time of its being passed, or such further period as may be fixed by that authority, subject to the orders of the Governor General in Council, shall be final. *Second.* In cases which, if decided by the sudder dewanny adawlut, would be appealable to his Majesty the King in Council, a similar appeal will lie from the decisions or awards of the sudder commission; and the same rules and regulations as are or may be applicable to all appeals from the aforesaid court, shall be applicable to all appeals from the decisions or awards of the said commission: provided however that all decisions passed, or awards made, by the sudder commission, shall be immediately executed and enforced, notwithstanding the institution of such an appeal. All decisions and awards passed by the sudder commission shall be final, unless regularly appealed to his Majesty in Council. *Third.* The said commissions, and each of them, shall, in all cases received or investigated by them respectively, be competent to determine all pleas or questions touching their jurisdiction, in the same manner, and with the same powers, as they are or may be authorized to determine on the merits of cases, of which the cognizance is expressly vested in them, any thing in the existing regulations to the contrary notwithstanding; and no exception shall be taken to any decision or award passed or made by the said commissions, or either of them, on the ground that the case in or concerning which such decision or award may have been passed or made, was not regularly within the cognizance of the commission by which it was passed or made, or on any plea or pretext whatsoever, saving and except by the sudder commission, in cases appealed or certified to it from the mofussil commission, or by his Majesty the King in Council in cases appealable to that authority; nor shall any court of judicature interrupt or stay any proceeding of the said commissions, or either of them, in any cases received, investigated, or determined by them respectively." § 12. "First. The sudder and mofussil commissions shall, where not otherwise specially directed, be guided generally by the principles and spirit of the existing regulations, or where those may not be applicable, by equity and good conscience. *Second.* Provided also that it shall and may be lawful for the said commissions, and each of them, to propose regulations regarding any matters coming within their cognizance, in the manner prescribed for the courts of judicature; and if any provision in the existing regulations applicable to any case depending before the mofussil or sudder commission, shall appear to them, or either of them, to be inequitable or improper, it shall be competent to the commission before which the case may be depending, to stay its proceedings, for the purpose of submitting a draft of such rules as may appear necessary for the amendment of the existing code: and to await the result of the reference, and finally to proceed in and determine the case according to the law, as ultimately declared or enacted: making of course due compensation to any one whose rights under the existing law may be affected by their decision. *Third.* Before entering on the performance of their functions, the members of the said commissions shall bind themselves to

may not agree in opinion and the number of voices on each side may be equal.

Section 11.  
In what cases the decision of the mofussil commission is to be final.

In what cases an appeal to be admitted from the decisions of the sudder commission to his Majesty in Council. Proviso.

Questions connected with the jurisdiction of the commissions how to be determined.

Courts of justice not to interrupt or stay the proceedings of the commissions. Section 12. The commissions to be guided generally by the principles of the regulations. Commissions may propose new regulations, or may submit rules for amending any part of the existing code in matters connected with the duties entrusted to them. Oath to be taken by the members of the commissions.

the faithful discharge of the duties entrusted to them, by a solemn oath, in such form, and to be taken before such person or persons, as the Governor General in Council may direct."

R 2, 1821.

**" A.D. 1821. REGULATION II."**

Title.

*" A Regulation for increasing the powers of moonsiffs ; for extending, in special cases, the powers of sudder ameens in the trial and decision of civil suits ; and for authorizing the zillah and city registers, and sudder ameens, to discharge certain additional duties under the direction of the zillah and city judges ; for providing for an increase in the number of moonsiffs when necessary ; and for authorizing sudder ameens to hold their cutcherries at any place where there may be a register holding his court at a distance from the fixed station of the judge and magistrate ; also for amending the rules at present in force for the institution of suits connected with the local jurisdiction of such registers ; for rescinding such parts of the existing regulations as authorise the registers of civil courts to receive a proportion of the institution fees on suits which may be referred to them for decision ; for altering, in certain cases, the rule at present in force for the execution of decrees of the provincial courts in original suits, and of the decrees of the court of sudder dewanny adawlut on appeals from such decrees ; and for abolishing the office of register of the provincial courts of appeal and circuit : passed by the Governor General in Council on the 19th of January, 1821."*

Preamble

" Whereas from the contracted powers exercised by the subordinate judicial officers, European and Native, under the existing regulations, a much larger proportion of business devolves on the zillah and city judges than can properly be discharged by them ; and whereas the relieving them from part of that business, by increasing the powers of the registers, sudder ameens, and moonsiffs, will tend to expedite the general administration of justice ; and whereas it has become necessary to provide for an increase in the number of moonsiffs, in consequence of the number prescribed by the regulations, of one to each thannah jurisdiction, having been found in some places insufficient ; and whereas great inconvenience is experienced from the want of sudder ameens at those places where registers are permanently fixed at a distance from the sudder station, as well as from the said registers not being vested with powers to admit suits arising within the limits of their local jurisdictions ; and whereas it is expedient, with a view to afford still further relief to the judges of the zillah and city courts held at the same place with the provincial courts, that the provincial courts should execute their own decrees in original suits, and the decrees of the sudder dewanny adawlut in appeals from such original suits, within the local limits of the jurisdiction of the aforesaid judges ; and whereas it is also expedient that the judges of the zillah and city courts should be empowered to refer summary suits to any amount, for the recovery of arrears of rent, and for possession of land, crops, and other property, in cases of forcible dispossession, to such of their registers as may be vested with any of the special powers specified in Regulation 24, 1814 ; and whereas it is also expedient to substitute a fixed allowance in lieu of the fees hitherto granted to the registers of zillah and city courts on the decision of civil suits, and to abolish the office of register to the provincial courts of appeal and circuit ; the following rules have been enacted, to be in

force from the date of their promulgation throughout the territories subject to the presidency of Fort William."

§ 2. "If the civil business within the limits of a thannah cannot conveniently be discharged by one moonsiff, as prescribed by Section 6, Regulation 23, 1814, the provincial courts are hereby authorized, on the recommendation of the city or zillah judge, to augment, from time to time, the number of those officers as circumstances may require." § 3. "*First.* Persons invested with the powers of moonsiffs are authorized to receive, try, and determine, all suits preferred to them against any native inhabitant of their respective jurisdictions, for money or other personal property, not exceeding in amount or value the sum of one hundred and fifty sicca rupees; provided the cause of action shall have arisen within the period of three years previously to the institution of the suit, and that the claim include the whole amount of the demand arising from such cause of action, and that the claim be really as prescribed in Clause First, Section 13, Regulation 23, 1814, for money due, or for personal property, or for the value of such property, and be not for damages on account of alleged personal injuries, or for personal damages of whatever nature. *Second.* The prohibitions contained in the second and third clauses of Section 13, Regulation 23, 1814, are hereby declared applicable to the suits above-mentioned. *Third.* In suits instituted before the moonsiffs under the foregoing clause, stamp duties shall be levied in conformity with the provisions contained in Section 70, Regulation 23, 1814; and the compensation to which the moonsiffs shall be entitled for their trouble in the trial of such suits, shall be adjusted in conformity to the rules contained in Section 49, of the same regulation. *Fourth.* The provisions contained in the existing regulations relative to the trial and decision of suits already cognizable by the moonsiffs, are hereby declared to be equally applicable to suits which may be instituted before those officers, under this regulation." § 4. "By Section 20, Regulation 5, 1812, it is provided, that suits instituted under that regulation for the recovery of arrears of rent, may be decided by the zillah and city judges on summary enquiry; it was not however intended by that provision to preclude individuals from instituting a regular suit in the first instance for the more formal investigation of the merits of the case, either before the moonsiffs, or in the zillah and city or provincial courts, according to the amount at issue; and the zillah and city judges are hereby enjoined to encourage, as much as possible, that mode of procedure, as well in the suits above adverted to, as in all other claims for arrears of rent which may be cognizable by summary process under the existing rules, whenever it may, in their opinion, lead to a more prompt and satisfactory determination of the points at issue." § 5. "*First.* It shall be competent to the sudder dewanny adawlut to invest any person exercising the functions of a sudder ameen, with the power to try and determine original civil suits, in which the value or amount of the claim may not exceed five hundred rupees. *Second.* In addition to the powers vested in the sudder ameens under the provisions of Section 68, Regulation 23, 1814, and Clause Second, Section 7, Regulation 24, 1814, the zillah and city judges are authorized to refer to a sudder ameen, duly empowered under the preceding clause, any depending civil suits, with the exceptions specified in Section 68, Regulation 23, 1814, in which the value or amount of the claim, calculated according to the provisions of Section 14, Regulation 1, 1814, Section 23, Regulation 26, 1814, and Section 5, Regulation 19, 1817, may not exceed five hundred rupees. *Third.* Suits referred to sudder ameens, in which the value or amount of the claim may exceed one hundred and fifty sicca rupees, shall be received, tried, and determined, in conformity with the provisions of Regulation 23, 1814. In suits, however, which may be referred to sudder ameens under the preceding

Section 2. The provincial courts empowered to increase the number of moonsiffs on the recommendation of a city or zillah judge. Section 3. Moonsiffs empowered to try and decide on suits not exceeding 150 rupees. Proviso.

Prohibitions in R. 23, 1814, applicable to such suits. The payment of stamp duties and compensations to moonsiffs how to be regulated. Rules in force declared applicable to suits instituted under this regulation. Section 4. City and zillah judges to encourage the institution of regular, instead of summary suits, in certain cases.

Section 5. Sudder dewanny adawlut may invest sudder ameens with authority to try original suits not exceeding 500 rupees. City and zillah judges authorized to refer depending civil suits to such ameens, provided the computed amount of each claim does not exceed 500 rupees. Exceptions. Sudderameens to be guided by the provisions contained in R. 23, 1814. But to receive only a moiety of the institution fee, or stamp duty,

when the claim exceeds 150 rupees.

Certain clauses of Section 8, R. 24, 1814, applicable to such cases.

Section 6. Section 67, R. 23, 1814, modified, and sudder ameens authorized to hold their cutcherries at any place where a register may be stationed.

Proviso. Section 7. Modification of rules in force which require that decrees passed by sudder ameens and moonsiffs be executed under the orders of a city or zillah judge. The judge may refer to the register applications for the execution of decrees of sudder ameens and moonsiffs. By what officers the orders to be executed on such occasions. Section 8. Modification of rules in force which require the provincial courts to direct their decrees being executed by the city and zillah judges.

In what cases the provincial courts of appeal are to execute their own decrees, as well as the decisions in appeal of the sudder dewanny adawlut.

Section 9. Judges of city and zillah courts may refer summary suits of any amount to

clause, in which the value or amount of the claim may be above one hundred and fifty rupees, but may not exceed five hundred rupees, the sudder ameens shall be entitled to receive one moiety only of the institution fee, or of the amount of the stamp duty substituted for such institution fee by Regulation 1, 1814. *Fourth.* The provisions of Clauses Third, Fourth, Fifth, and Sixth, Section 8, Regulation 24, 1814, are hereby declared applicable to suits referred for trial to the sudder ameens, in which the value or amount of the claim may be above one hundred and fifty rupees, but may not exceed five hundred rupees." § 6. "By Section 61, Regulation 23, 1814, the number of sudder ameens, to be employed in each zillah or city, is declared to be unlimited, and the provincial courts may at all times exercise their discretion in diminishing or augmenting the number of those officers. In modification, however, of the rule contained in Section 67 of the said regulation, by which sudder ameens are required to hold their cutcherries at the station where the zillah or city court is held, it is hereby declared that one or more sudder ameens may be employed, and may hold their cutcherries at any place where a register may be stationed at a distance from the zillah or city court to which he is attached. Such sudder ameens shall exercise the same powers and functions, and shall be entitled to the same compensation, as sudder ameens at the station of the judge; provided however that original suits and appeals referable to such sudder ameens shall be referred in the mode prescribed by Section 11, of this regulation." § 7. "*First.* Petitions for the execution of decrees in civil suits shall be presented as heretofore, in the manner prescribed by the several clauses of Section 15, Regulation 26, 1814, but such parts of the regulations as require that decrees passed in civil suits by the sudder ameens, or by moonsiffs, shall be executed or enforced under the special orders of the zillah and city judges, are declared subject to the following modifications. *Second.* Whenever the 'miscellaneous business depending in a zillah or city court would occupy a larger portion of time than the judge can conveniently devote to it, he is authorized to refer to the registers all applications for the execution of decrees passed by the sudder ameens or moonsiffs. In these cases, an appeal from the orders of the register or sudder ameen will lie in the first instance to the judges, and specially to the provincial court. *Third.* All orders issued by registers or sudder ameens in cases so referred to them, shall be executed by the officers of the zillah and city courts, under the rules prescribed in the general regulations for the execution of decrees." § 8. "Such parts of Section 6, Regulation 5, 1793, extended to Benares by Section 6, Regulation 9, 1795, and to the ceded and conquered provinces by Section 6, Regulation 4, 1803, as prescribe that the provincial courts of appeal shall order the decrees which they may pass, to be executed by the judge of the proper zillah and city court, are hereby modified; and it is declared that the decrees passed by the judges of the provincial courts, in all original regular suits relating to the jurisdiction of the zillah or city court, within the local limits of which the provincial courts are situated, and the decisions of the court of sudder dewanny adawlut in appeal from all such decrees, shall be executed by the provincial courts themselves; and all orders issued by the judges of those courts, in such cases, shall be executed by the officers attached to the said provincial courts respectively, under the rules prescribed in the general regulations for the execution of decrees." § 9. "In addition to such provisions of the existing regulations as authorize the judges of the zillah and city courts to refer to their registers summary suits for the recovery of arrears of rent, or for possession of land, crops, or other property, in cases of forcible dispossession, provided that the cause of action would be referable to their registers in a regular suit; it is hereby declared that the zillah and city judges may refer to such of their registers as may be

vested with any of the special powers under Regulation 24, 1814, summary suits of any amount depending before them, concerning arrears of rent, or regarding forcible dispossession from lands or crops, or disturbance in the possession thereof: provided always that the zillah and city judges may at any time recal such suits, or any other miscellaneous cases referred to a register, on the representations of the parties or otherwise, in such manner as they may deem just and proper." § 10. "First. Whereas the speedy and satisfactory adjustment of summary suits, of the description mentioned in the preceding sections, will be promoted by authorizing the trial and decision of such suits at any place within the limits of the jurisdiction in which the cause of action may have arisen, such parts of the regulations in force as prescribe that the zillah and city courts shall be held in the city or place at which they are respectively established, and that no rule, order, or proceeding, is to be made, but on court days, and in open court, are hereby declared subject to the following modifications. *Second.* The judges and registers of the zillah and city courts are empowered to hold their proceedings in summary suits regarding rent or dispossession from lands, or crops, or disturbance in the possession thereof, at any place within the jurisdiction of the courts to which they may be respectively attached; provided that the cause of action shall have arisen within the limits of such jurisdiction, and that the zillah or city judge or register, shall be of opinion that the investigation of the case can be more conveniently conducted at such place than at the sudder station. *Third.* The established pleaders of the zillah and city courts shall not be required to attend the trial of summary suits at a distance from the fixed station of the judge or register. Such suits shall be tried in the presence of the parties, or any persons whom they may duly appoint to be present at the trial on their behalf. *Fourth.* The principle of the foregoing rules is hereby declared to be equally applicable to summary suits referred for investigation to the collectors." § 11. "First. Such parts of the regulations in force as require that suits referrible to a register shall be instituted in the first instance in the courts of the zillah and city judges, are hereby declared subject to the following modifications. *Second.* It shall be competent to a register, stationed at any other place than the fixed station of the zillah or city court, to receive in the first instance any original suits or appeals, which may be eventually referrible to him under the regulations in force, in which the cause of action may have arisen, or the parties may reside, within the local jurisdiction entrusted to him as joint magistrate of the district of which he may be the register, or officiating in that capacity. *Third.* When an original suit or appeal shall be preferred to a register under the provisions of the preceding clause, he shall, after receiving the same, enter it in the register usually kept for that purpose, and shall forward, by dawk or otherwise, a copy of the petition of complaint or appeal, together with copies of any other papers connected with it that may be necessary, to the zillah or city court, for the orders of the judge; who, after causing the same to be registered, will either authorize the suit to be tried and determined by the register or the sudder ameen stationed with the register, according to the nature or amount of the suit; or will require the case to be transmitted for trial, either by himself, or any other competent authority. In the latter case, the plaintiff or appellant shall be required to attend in person, or by vakeel, to prosecute the suit in the court in which the case may have been ordered to be tried, at the sudder station." § 12. "All applications for the execution of decrees passed by the sudder ameens and moonsiffs, within the local jurisdiction of the registers fixed at any other than the sudder station of the zillah or city court, are hereby authorized to be received by such registers; who shall be competent to execute them themselves, or to refer them for execution to the sudder ameens within their

their registers if they are vested with special powers.

Proviso.

Section 10.

Modification

of rules in

force relative

to the place at

which the zillah

and city

courts are to

be held.

Judges and

registers em-

powered to

hold their pro-

ceedings in

summary

cases at any

place within

the jurisdic-

tion of the

court to which

they may be

attached.

Proviso.

Pleaders ex-

empted from

attending the

trial of sum-

mary suits at

a distance

from the sta-

tion of the

judge or re-

gister.

Same rules ap-

plicable to

summary suits

referred to the

collectors.

Section 11.

Modification

of rules which

direct that

suits referrible

to registers

shall be insti-

tuted in the

courts of the

judges.

Registers at

other than the

fixed stations

of the courts

may in the

first instance

receive origi-

nal suits or

appeals.

How registers

are to proceed

on the receipt

of such suits

or appeals.

Section 12.

In what cases

registers may

receive applica-

tions for the

execution of

decrees of sud-

der ameens

and moonsiffs.

And execute them or refer them to the sudder ameens.

Section 13. Certain clauses of regulations which authorize registers to receive fees on the amount of stamp duty on the decision of suits, rescinded.

Registers to receive a fixed allowance, instead of fees, after 30th April, 1821.

Section 14. Office of registers of the provincial courts abolished, and duties by whom to be performed.

respective jurisdictions, in the mode prescribed by Clause Third, Section 7, of this regulation. Appeals from the orders of the sudder ameens shall in like manner be made in the first instance to the said registers." § 13. "The several clauses of Section 8, and Section 9, Regulation 24, 1814, and generally any other provisions of the regulations, which authorize the registers of the zillah and city courts to receive a proportion of the fees, or the amount of stamp duty substituted for such fees by Regulation 1, 1814, on the decision of suits referred to them for trial, are hereby rescinded. The registers of the zillah and city courts shall not be entitled to any fees whatever on account of any civil suits decided by them subsequently to the 30th of April next ensuing; but are to receive, from the 1st of May next, in lieu of such fees, a fixed allowance, the amount of which will be determined by Government." § 14. "The office of register of the provincial courts of appeal and circuit shall be abolished from the 1st of May next ensuing; and the duties hitherto entrusted to those officers shall be performed by the judges of the provincial courts, and by the officers on their establishment, in such mode and under such rules as may be enjoined by the court of sudder dewanny adawlut and nizamat adawlut."

R. 3, 1821.

### " A. D. 1821. REGULATION III."

Title.

*"A Regulation for extending, in special cases, the powers of assistants to the magistrates; for empowering the Hindoo and Mohummudan law officers of the zillah and city courts, and sudder ameens, to try and determine petty thefts, and other criminal cases of a trivial nature, when referred to them by a magistrate; for limiting the period of appeal in foudjarry cases; for rescinding parts of Section 12 and Section 17, Regulation 22, 1816; for modifying some of the rules in force relative to the rate and collection of the assessment levied for the maintenance of chokeedars of police; and for vesting the magistrates with certain powers in regard to persons travelling through, or assembling within, their jurisdictions, under suspicious circumstances: passed by the Governor General in Council, on the 19th of January, 1821."*

Preamble.

"Whereas the powers now vested in assistants to the magistrates by Section 20, Regulation 9, 1807, do not enable them to afford that aid to the magistrates which the state of public business in many districts requires, it is advisable to authorize in certain cases an increase of those powers: it is also deemed expedient, with a view to the speedy trial and punishment or acquittal of persons charged with petty offences, and to the due administration of criminal justice in cases of a trivial nature, to empower the Hindoo and Mohummudan law officers of the zillah and city courts, and the sudder ameens, to try and determine such cases, when referred to them by a magistrate; and to guard against the inconvenience which has been experienced from the unlimited privilege at present exercised of appealing in foudjarry cases; and whereas it has been found expedient to rescind Clause Second, and such parts of Clause First, Section 12, Regulation 22, 1816, as require that persons considering themselves aggrieved by the assessment authorized to be levied for the maintenance of the chokeedars of police, shall present a

petition to the magistrate or joint magistrate on stamp paper; and to authorize the judges holding the sessions of jail delivery to report upon any abuses or irregularities which may appear to them to exist in the management and collection of the assessment levied for the support of chokeedars of police; and whereas there is reason to believe that persons, being the subjects of foreign states, often enter the territories of the British Government in large bodies, under the assumed character of travellers of rank and distinction, for the sole purpose of robbery and plunder; and as it is necessary to vest the zillah and city magistrates and joint magistrates with sufficient powers to prevent such practices; the following rules have been enacted, to be in force from the date of their promulgation throughout the territories subject to the presidency of Fort William." § 2. "First. Whenever the accumulation of

judicial business in a zillah or city may render it impracticable for a magistrate to discharge it with sufficient dispatch, and the court of nizamat adawlut may be of opinion, either in consequence of a report from the magistrate of such zillah or city, or from any other information before them, that the assistant of such magistrate is duly qualified by his experience, industry, and abilities, to be entrusted with the special powers described in the third clause of this section; the nizamat adawlut shall report accordingly to Government.

*Second.* On the receipt of such report from the nizamat adawlut, or upon any other information before Government, it shall be competent to the Governor General in Council to invest such assistants with the special powers described in the following clause; and information shall be communicated, in every instance in which such powers may be vested in an assistant, to the nizamat adawlut, to the court of circuit, and to the zillah or city magistrate.

*Third.* Section 20, Regulation 9, 1807, is hereby modified; and in addition to the powers vested in the assistants to the zillah and city magistrates, by the regulations heretofore in force, they may be specially empowered, in all cases referred to them, in which an individual may be convicted of any criminal offence punishable under the Mohummudan law and the regulations, for which the penalties authorized by the section above quoted may appear insufficient, and for which a more severe punishment than six months' imprisonment with thirty ratans, or a fine of two hundred rupees, may not have been specially prescribed, to pass sentence of imprisonment, not exceeding six months, with corporal punishment not exceeding thirty ratans, in cases in which corporal punishment by stripes is authorized by the regulations, or, in other cases, with a fine not exceeding two hundred rupees, commutable, if not paid, to a further period of imprisonment, not exceeding six months, so that the entire period of imprisonment, under the sentence of an assistant, shall, in no instance, exceed one year.

*Fourth.* In any case referred to the assistant of a zillah or city magistrate under the regulations in force, in which the offence proved against the prisoner may appear to require a more severe punishment than he is by the foregoing clause authorized to adjudge, he shall not pass any sentence; but shall submit his proceedings to the magistrate, who, after holding any further proceedings he may deem necessary, will, if satisfied of the guilt of the prisoner, either pass sentence on him, under Regulation 12, 1818, and the general regulations in force, or will commit or hold him to bail for trial before the court of circuit, according to the nature and circumstances of the case. *Fifth.* The rules contained in Sections 21 and 22, of Regulation 9, 1807, are to be considered applicable to all cases referred to the assistants, of the description specified in this Section. *Sixth.* The magistrates are moreover at all times authorized to recal from their assistants any depending cases, which may have been referred to them under the present or former regulations, and which for the more speedy administration of justice, or for any other reason,

Section 2. Nizamut adawlut to report on qualifications of assistants to magistrates, in cases of accumulation of business in zillah and city courts.

Governor General in Council empowered to invest such assistants with the special powers described in Clause Third of this regulation.

Section 20, R. 9, 1807, modified, and additional powers vested in assistants to magistrates.

In what cases assistants to magistrates not to pass sentence, but submit their proceedings to the magistrate.

Rules by which assistants are to be guided in cases thus referred to them. Magistrates may recal cases referred to their assistants.



Successors to assistants vested with special powers, not to exercise those powers unless authorized by Government.

The Governor General in Council may revoke the special powers entrusted to an assistant.

Section 3. Magistrates may refer petty complaints to their native law officers. And also cases heretofore referable to assistants in the mode prescribed by the existing regulations.

Such law officers empowered to exercise the powers vested in assistants to magistrates under the regulation in force.

Disposition of the rules referred to in such cases.

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holding the sessions next ensuing after such order shall have been passed, unless it shall be proved that the petitioner was prevented, by circumstances totally beyond his control, from presenting his petition within the prescribed period. *Second.* In calculating the period of one month above specified, the courts shall be guided by the principles of the rules contained in Clause Tenth, Section 8, Regulation 26, 1814." § 6. "*First.* The whole of Clause Second, and such parts of Clause First, Section 12, Regulation 22, 1816, as require that petitions of appeal from the assessment fixed by the punchayet for the maintenance of chokeedars of police, shall be presented on stamp paper, are hereby rescinded. *Second.* The magistrates and joint magistrates are empowered and required, notwithstanding any thing to the contrary contained in Section 19, Regulation 28, 1814, to receive on unstamped paper, all petitions which may be preferred to them by persons considering themselves aggrieved by the assessment, which may have been fixed by the punchayet, appointed under the provisions of Section 9, Regulation 22, 1816. *Third.* When petitions of the above nature shall be presented to a magistrate, or joint magistrate, he shall proceed upon them as directed in Clause First, Section 12, Regulation 22, 1816. It shall however be competent to the judges of circuit holding the jail delivery, on the receipt of information leading them to be of opinion that the rate of assessment is too high, or otherwise essentially wrong or defective in any respect, to report their sentiments on the subject to Government, in order that, after making such further enquiries as may be necessary, suitable measures may be adopted for the revision or correction of the assessment." § 7. "*First.* Whereas persons being the subjects of foreign states, and assuming the fictitious characters of rajahs or of natives of distinction, or of pilgrims, have frequently entered into the British territories, or have assembled together in armed bodies, for the purpose of committing robberies or other crimes within those territories, the following rules have been enacted, with a view to prevent the recurrence of those practices. *Second.* In addition to the powers vested in darogahs of police, by the several clauses of Section 20, Regulation 20, 1817, with regard to the apprehension of all vagrants and suspicious persons, they are hereby empowered to detain all persons travelling in bodies through their jurisdictions, or assembling therein, under circumstances leading to the suspicion that they have assumed a fictitious character, and that they are in reality persons of the description mentioned in the preceding clause; and unless on examination they shall be able to give a satisfactory account of themselves, the darogahs shall, without delay, either report to the magistrates the circumstances under which they may have been detained, or in cases of an emergent nature, shall forward such individuals to the magistrates. *Third.* If a darogah of police, acting under the discretion vested in him by the preceding clause, shall not see sufficient cause, after the examination of the persons suspected, to send them to the magistrate, or to detain them until the orders of the magistrate shall be received, but shall nevertheless entertain suspicions of their real character and intentions, he shall depute one or more police officers to watch their proceedings in passing through his jurisdiction, and shall notify the same to the adjoining police division, in order that the same precautions may be adopted and followed up. *Fourth.* If a darogah of police shall forward to the magistrate any persons travelling through, or assembling in his division, under suspicious circumstances, the magistrate having duly enquired into the grounds of their arrest, shall either release them, or adopt the precautionary measures directed in the preceding clause; or, if they appear to be travelling without any reasonable object, and to be inhabitants of a remote district, or subjects of a foreign state, he shall compel them to return, under a suitable guard, from station to station, to the district

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H. 4, 1821.

#### "A. D. 1821. REGULATION IV."

"A Regulation for authorizing a collector of land revenue, or other officer employed in the management or superintendence of any branch of the territorial revenues, to exercise, in certain cases, the powers of magistrate, or joint magistrate; and for authorizing a magistrate, or joint magistrate, or assistant to a magistrate, to exercise, in certain cases, the powers of a collector of land revenue, or of any other officer employed in the management or superintendence of any branch of the territorial revenues:—Also, for explaining the duties of an assistant to a collector of revenue, and for defining the duties and powers vested in assistant collectors or other officers appointed to the charge of the revenues of pergunnahs or other local divisions, or employed in the performance of any portion of the functions ordinarily belonging to collectors of land revenue: passed by the Governor General in Council, on the 19th of January, 1821."

Preamble.

"Whereas it may be expedient to authorize a collector of land revenue, or other officer employed in the management or superintendence of any branch of the territorial revenue, to exercise, in certain cases, the whole or any portion of the powers at present exercised respectively by a magistrate, or joint magistrate, or to vest the powers of a collector of revenue, or any portion thereof, in the hands of a magistrate, or joint magistrate, or of an assistant to a magistrate; and whereas it is expedient to explain the duties which may be performed by the assistants to the collectors of revenue, and to define the duties and powers vested in assistant collectors or other officers when appointed to the charge of the revenues of pergunnahs or other local divisions, or when employed in the performance of any portion of the functions ordinarily belonging to collectors of the land revenue; the following rules have been enacted, to be in force from the date of their promulgation throughout the territories subject to the presidency of Fort William." § 2. "It shall be competent to the Governor General in Council to authorize a collector of revenue, or other officer employed in the management or superintendence of

Section 2. Governor General in Council declared competent to authorize a collector or other revenue officer to exercise the

any branch of the territorial revenues, to exercise the whole or any portion of the powers and duties vested by the regulations in the magistrates or joint magistrates; or to employ a magistrate, joint magistrate, or an assistant to a magistrate, in the collection of the public revenue, and to invest the person so employed with the whole or any portion of the powers of a collector of revenue, or of other officer employed in the management or superintendence of any branch of the territorial revenues." § 3. "*First.* If a person holding the office of magistrate, or joint magistrate, or assistant to a magistrate, shall be employed in the collection of the public revenue, he shall, previously to entering upon the execution of the duties of a collector, take and subscribe the oath prescribed by Section 25, and Section 26, Regulation 5, 1804. *Second.* In like manner, if a person holding the office of collector of revenue, or of any other officer employed in the management or superintendence of any branch of the territorial revenues, shall be appointed to perform the duties of magistrate, or joint magistrate, he shall, previously to entering upon the execution of such office, take and subscribe the oath prescribed by Section 2, Regulation 9, 1793, and Clause First, Section 3, Regulation 13, 1793, with such verbal alterations only, as may be consonant to the nature of the appointment." § 4. "*First.* If a person holding the office of magistrate, joint magistrate, or of assistant to a magistrate, shall be employed in the collection of the public revenue, he shall be guided, in the execution of his duty as collector, by the orders of the board of revenue, or the board of commissioners, and by the rules and regulations that have been, or may be enacted for the collection of the public revenue. *Second.* If a person holding the office of collector of revenue, or otherwise employed in the management or superintendence of any branch of the territorial revenue, shall be appointed to perform the duties of magistrate, or joint magistrate, he shall be guided in the execution of those duties by the regulations which have been, or may be, enacted for the guidance of those officers respectively, and by the orders of the superior courts of criminal judicature, in all matters in which a controlling, or superintending power, is vested in those courts." § 5. "Every magistrate, or joint magistrate, or assistant to a magistrate, who may be employed in the collection of the revenue, and every collector or other officer employed in the management or collection of the territorial revenues, who may be authorized to exercise the powers of a magistrate, or joint magistrate, under the provisions of this regulation, shall be careful to preserve the records of their judicial and revenue offices separate, and distinct from each other." § 6. "*First.* Such parts of the existing regulations as declare the collectors of revenue to be amenable to the zillah and city courts, for any acts done by them in their official capacity, in opposition to the regulations, shall be held applicable to any magistrate, or joint magistrate, or assistant to a magistrate, who may be employed in the collection of the public revenue. *Second.* Provided always that if such individual shall, at the same time, hold the office of judge of the zillah or city in which the act in question may have been committed, such act shall not be cognizable by the zillah or city court, but by the provincial court of the division in which such zillah or city may be included." § 7. "In the institution of suits for the recovery of the public revenue, or in any case in which the institution of a suit by the collector in the zillah or city courts is authorized, or directed by the regulations, a magistrate, or joint magistrate, or assistant to a magistrate, employed in the collection of the revenue, not being himself in charge of the office of judge of a zillah or city court, shall proceed according to the regulations already in force for the guidance of the collectors under similar circumstances." § 8. "*First.* It is hereby declared and enacted, that it is and shall be lawful for the Governor General in Council to cause such alter-

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## INDEX TO VOL. I.

*Comprising general legislative Provisions for a Code of Laws and Regulations ; with the Rules enacted relative to Civil and Criminal Justice, and the Police.*

\* \* \* The Numbers in the Index refer to Pages in the Analysis.

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Ninth. Rule for the disposal of unclaimed suspicious property, *ibid.*

Tenth. All particulars regarding property, so found, shall be carefully transmitted to the magistrate, *ibid.*

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Sixth. Witnesses to be carefully bound over, *ibid.*

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Fifth. This report, if favorable, shall be transmitted to magistrate ; if not, witnesses shall be immediately bound over to appear, *ibid.*

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## ERRATUM.

The following *Erratum*, supplying an omission in the second clause of Section 7, Regulation 2, 1821, has been received from India since that Regulation was printed in the Appendix, pages 572 to 576 :

“ After the word ‘ Registers’ in the fourth line of Clause Second, Section 7, Regulation 2, 1821, add the words ‘ *or Sudder Ameens,*’ which have been accidentally omitted in the printed copies of the Regulation.”

## NOTE.

In the orthography of Asiatic words, which occur in this Analysis, no correct system has been attempted. The mode of spelling such words, which is adopted in the Regulations, and orders of Government, has been generally followed. Where any accentual marks have been used, á, é, í or ee, ó, ú or oo, have been intended to represent the long vowels ; a or u, e, i, o, öo, the short vowels ; aí or ý, and aú, or ou, the diphthongs composed of the first and third, and first and fifth, vowels ; and â, the peculiar Arabic letter âyn, which Sir William Jones proposes to note uniformly by a circumflex. The want of prepared types, however, has frequently prevented the adoption of this notation ; especially where it was chiefly desired, for accuracy, in citing the authorities of Mohummudan law.

THE END.

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